

MEETING
STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF HEALTH SERVICES
FORENSIC ALCOHOL REVIEW COMMITTEE

DEPARTMENT OF HEALTH SERVICES
RICHMOND CAMPUS CONFERENCE CENTER
850 MARINA BAY PARKWAY
AUDITORIUM
RICHMOND, CALIFORNIA

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APPEARANCES

REVIEW COMMITTEE MEMBERS

Mr. Paul Kimsey, Ph.D., Chairperson

Ms. Patricia Lough

Mr. Bruce Lyle

Mr. Paul Sedgwick

Ms. Laura Tanney

Mr. Kenton Wong

STAFF

Mr. Clay Larson, Chief, Abused Substances Analysis Section

Dr. Mary Soliman, Chief, Food & Drug Laboratory Services

ALSO PRESENT

Mr. Roger Dunstan(via teleconference), Senate Health
Committee

Dr. Nikolas Lemos, San Francisco Office of Medical
Examiner

Ms. Halle Weingarten

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1 PROCEEDINGS

2 CHAIRPERSON KIMSEY: We'll go ahead and get
3 started.

4 I'll sort of open the meeting. I'm Dr. Paul
5 Kimsey from the Department of Health Services. And this
6 is the third meeting of the Forensic Alcohol Review
7 Committee here in Richmond. And we have an agenda in the
8 package which we will talk a bit about and sort of review.

9 But I thought we'd just go around. I know that
10 Torr Zielenski let us know that he would not be able to
11 attend today. And Officer Cardona is in route, I believe;
12 at least that's my understanding.

13 But let's go around the table for the other folks
14 that are here.

15 COMMITTEE MEMBER LYLE: I'm Bruce Lyle. I'm with
16 the Orange County Sheriff-Coroner Department representing
17 the California State Coroners' Association.

18 COMMITTEE MEMBER TANNEY: I'm Laura Tanney from
19 the San Diego County District Attorney's Office
20 representing the California District Attorneys'
21 Association.

22 COMMITTEE MEMBER LOUGH: Patricia Lough
23 representing the California Association of Crime Lab
24 Directors.

25 COMMITTEE MEMBER SEDGWICK: Paul Sedgwick

1 representing the California Association of Toxicologists.

2 COMMITTEE MEMBER WONG: Kenton Wong from the San
3 Mateo County Crime Lab representing the California
4 Association of Criminalists.

5 CHAIRPERSON KIMSEY: Welcome and thank you.

6 This meeting is being -- we have a teleconference
7 call-in number set up. So some of the state staff may be
8 calling in. And I believe we also have a gentleman
9 possibly calling in this afternoon from a legislative
10 office.

11 And we're also trying to do a audio recording.
12 And we do have the court reporter here for a transcript.

13 And with that, I thought we just might review the
14 agenda that we've set up for today.

15 As you know, this being our third meeting, that
16 this is a legislatively mandated committee from SB 1623 to
17 review Title 17 regulations regarding forensic alcohol.

18 And we thought we would -- as you can see the
19 agenda, we have some opening remarks and a discussion of
20 the agenda. We'll have some public comment on that. And
21 then a discussion of the role of the Department in
22 enforcing forensic alcohol regulations. That's pretty
23 much for a committee discussion. We're going to look at
24 the statutory requirements and some public -- possible
25 public health issues.

1 And then we thought we would move into the
2 introduction of the Subcommittee's regulatory work
3 product. As you know, the full Committee directed a
4 smaller group, a subcommittee -- Cathy Ruebusch and Patty
5 Lough and myself -- to do some work. And that work
6 product is available and we can review that. And talk a
7 bit about how we might want to proceed.

8 Then just before lunch -- and obviously we have a
9 bit of a -- we may have a little bit of a late lunch or --
10 anyhow, the next sequence on the agenda would be for the
11 Committee to review the Subcommittee's regulatory work
12 product and have some discussions about how to proceed
13 through that, if that is the wish of the Committee.

14 And then at some point we'd have lunch and then
15 come back and continue to work reviewing the
16 Subcommittee's work product. And we'd have public
17 comment.

18 That's pretty much the agenda as proposed. Would
19 anyone like to comment, make suggestions, changes to the
20 agenda?

21 I don't see any comments from the Committee.

22 Any public comment at this point?

23 Okay. Good.

24 So we've almost caught up on the agenda.

25 We can have a discussion towards the end about

1 future meetings. We had a little bit of a discussion
2 about possibly doing videoconference between San Diego and
3 northern California next time to help facilitate the
4 travel issues with regards to these meetings.

5 As you know, one of the issues that has come up
6 from the Committee -- and I'm just sort of introducing the
7 topic. I don't mean to be directing the conversation
8 necessarily. But one of the issues that the Committee has
9 been working on is the whole enforcement aspect of the
10 legislation and of these regulations.

11 And I believe its 100725 that basically directs
12 the Department to enforce these regulations. And as
13 you'll see with the work product, one of the initial
14 issues that the Subcommittee worked with and the full
15 Committee's to talk about is the whole enforcement arena
16 for the Department. And as sort of a brief review at the
17 first Committee's meeting -- no, the first two meetings
18 we've talked about the courts being involved in some
19 aspects of the enforcement of the regulations. And the
20 Department, I must say, is struggling with the legislative
21 language that does direct the Department to enforce the
22 regulations.

23 And so I think at some point we will need to look
24 at what language the Committee would like to have that's
25 going to be in regulations directing the Department one

1 way or the other, either to work with the courts or --
2 there's going to have to be something said in regulation,
3 I would -- would be my perspective that the Department can
4 use to sort of clarify and specify its role past what the
5 legislation just says of its responsibility to enforce the
6 regulations.

7 I don't know. Does the rest of the Committee
8 have any perspective?

9 In the comments the Department has had
10 internally, it's fairly clear from the Department's
11 perspective that we do have a role here, because the
12 statute specifically says that. And so at some point with
13 regulation's responsibility to sort of clarify and give
14 more direction to statute, the Department is going to need
15 to have something to that effect in regulation.

16 So, currently there -- as the current regulations
17 stand, there's quite a bit of enforcement issues. It's
18 fairly clear from the legislation too that the Department
19 is not to license and we're not to do on-sites. And so I
20 think some relationship with the court system is probably
21 a direction we need to go. It also brings up the issue
22 of: Will the Department know which companies or entities
23 are actually doing this type of work in the state?
24 Although I'm personally concerned it sounds a little bit
25 like licensure. You can have registration just so the

1 Department would know who all is doing forensic alcohol
2 work in the state. Registration is not licensure, but
3 it's sort of -- it's starting to go down that road.

4 And then you also think about enforcement.
5 Generally that implies taking something away. And, again,
6 if you take away our registration, that sounds a lot like
7 licensure.

8 But the Department having information that the
9 courts might want, whether -- you know, we are obviously
10 responsible for the Title 17 regulations -- making those
11 available to the courts is also something that would be --
12 something that could be put into regulations and
13 responsibility of the Department.

14 But so far it's been a monologue.

15 COMMITTEE MEMBER LOUGH: And also to make sure
16 that the review committee meets --

17 CHAIRPERSON KIMSEY: Oh, yes.

18 COMMITTEE MEMBER LOUGH: -- as prescribed, so
19 that they would be that central focal point to make sure
20 that that occurs.

21 CHAIRPERSON KIMSEY: No. And that's pretty clear
22 in the statute. This is a legislative mandated group. I
23 believe it has to meet at least once every five years or
24 within a certain number of days of request from any member
25 of the group. I think it's 90 days. So this group is

1 pretty much going to be involved into the future with
2 these regulations.

3 And the recommendations that we make, there is a
4 sort of a review before -- there's something of a time
5 sequence here. But at some point the Health & Human
6 Service Agency needs to review the work of this Committee
7 and approve or disapprove changes to the regulations.

8 And so -- and at some point we can obviously take
9 votes. But -- and this is not meant to be a consensus
10 group. So we will be taking votes.

11 But what is the feeling of the Committee about a
12 registration, if the Department were to register
13 laboratories doing this type of work?

14 COMMITTEE MEMBER SEDGWICK: Gut feeling, it
15 sounds a whole lot like licensure. I don't see any way
16 that any attorney is going to look at them -- there being
17 a significant difference or any difference at all.

18 COMMITTEE MEMBER LOUGH: If somebody registers,
19 then you're going to have to have a staff that can look to
20 see if they have the right qualifications and kind of go
21 back to the same -- because then anybody could register
22 and say, "I'm registered with the state."

23 CHAIRPERSON KIMSEY: Right. I mean obviously
24 there is -- the Department would have to maintain a list.
25 I think the Committee can have further discussion about

1 what else the Department does. I mean just keeping a list
2 of who's doing the work in the state does not necessarily
3 mean anything else, I mean unless we ask them to. In
4 other words, like you said, review, you know,
5 qualifications or whatever.

6 I think the Department's concern is, if we're
7 responsible for enforcement and we don't know who's doing
8 the work, then if we get an inquiry from a court saying
9 XYZ in Merced did X, we will not be able to comment. I
10 mean...

11 COMMITTEE MEMBER TANNEY: I think that's
12 something I would have to think about -- it's something
13 I'm going to have to give more thought to rather than
14 coming up with this spur of the moment response. Because
15 I think -- it's true that registration does not
16 necessarily mean that there's any licensing. It's again,
17 like you said, just giving a list -- it provides you the
18 opportunity of having a list of everybody doing this type
19 of work.

20 But then how you use that in conjunction with
21 your enforcement of the regulations, does that then amount
22 to the oversight that the labs are trying to avoid?

23 CHAIRPERSON KIMSEY: No, I understand. And this
24 wasn't really meant to sort of make a decision today.
25 It's just something that we talked about at the last maybe

1 one or two meetings. But it really is something that --
2 as you see, once we get into the subcommittee's work
3 product, you know, it's going to come back.

4 And so one of the things we may decide today --
5 and we need to sort of think about how we want to continue
6 the work of the Committee. I mean obviously we can do a
7 subcommittee again. But we'll need to give I think a
8 little more direction about specific areas to the
9 Committee -- to the Subcommittee. And/or we -- if we do
10 come up into a videoconferencing setup where it's easier
11 for us to get together, then we can obviously address some
12 of these issues.

13 But are there -- does anyone think of an
14 alternative to something like registration?

15 The other thing is if the Department doesn't know
16 who's doing the work, I guess nobody at the state level
17 would, unless in regulation we give that responsibility to
18 another entity.

19 COMMITTEE MEMBER LOUGH: I think the intention
20 was to make alcohol analysis consistent with other
21 forensic disciplines where there -- where the state
22 doesn't necessarily know who's doing what.

23 CHAIRPERSON KIMSEY: The Department of Justice
24 doesn't know who does forensic -- other forensic work?

25 COMMITTEE MEMBER LOUGH: Well, we all know who's

1 doing forensic work just based on the fact of the meetings
2 we attend, we kind of know who the people are that are
3 involved. But there's no oversight with all of the other
4 disciplines.

5 COMMITTEE MEMBER TANNEY: Are there regulations
6 that cover them then?

7 COMMITTEE MEMBER LOUGH: No.

8 So we were just trying to make this consistent
9 with that firearm, tool marks, DNA.

10 CHAIRPERSON KIMSEY: And I think that's one of
11 the things that was confusing to the Department about the
12 statute that -- you know, we'd sort of been written out of
13 the whole thing. If it had been more clear, then I think
14 that -- what we're struggling with is we still seem to
15 have this statutory responsibility. And --

16 COMMITTEE MEMBER SEDGWICK: I'm not familiar with
17 the statutory responsibility that you've just mentioned.

18 CHAIRPERSON KIMSEY: Okay. I think it's 100 --
19 it's still between the bill in the statute. I think it's
20 100725.

21 Let me look here. In each one of our packets.
22 It's one I was in.

23 COMMITTEE MEMBER TANNEY: So it was in the
24 original packet of materials that we received, I believe.

25 COMMITTEE MEMBER LOUGH: This was last amended in

1 1971. Was that the one?

2 COMMITTEE MEMBER TANNEY: This was -- this is --

3 COMMITTEE MEMBER LOUGH: Well, this is the new
4 one.

5 COMMITTEE MEMBER TANNEY: -- provision.

6 COMMITTEE MEMBER LOUGH: Right. But that was
7 left in. And I'm not sure if the intention was to have
8 that left in, that that should have been repealed.

9 CHAIRPERSON KIMSEY: Yeah, can you read it real
10 quick. I can't seem to find it in mine.

11 COMMITTEE MEMBER LOUGH: One hundred seven
12 twenty-five.

13 "On or after January 1, 1971, the Department
14 shall enforce this chapter and regulations adopted by the
15 Department."

16 Probably if we went back to our original notes
17 when the bill was going through, we might see if that was
18 supposed to have been taken out or not. That might be
19 what the issue was.

20 CHAIRPERSON KIMSEY: Right. You know, barring,
21 you know, sometimes what's known as cleanup legislation,
22 we are -- you know, the Department doesn't really have a
23 lot of leeway about -- but we're obviously in a time frame
24 here where the current regulations are still in place.
25 And that's -- and I guess that's different than the other

1 forensic -- you don't have regulations for --

2 COMMITTEE MEMBER LOUGH: -- any of the
3 disciplines.

4 CHAIRPERSON KIMSEY: And there was an interest in
5 keeping these Title 17 regulations in play in some form,
6 right?

7 COMMITTEE MEMBER LOUGH: Yes, we wanted to make
8 sure we kept the science.

9 CHAIRPERSON KIMSEY: Right.

10 COMMITTEE MEMBER TANNEY: The problem is is then
11 who would enforce them if the Department doesn't enforce
12 them?

13 COMMITTEE MEMBER LOUGH: Right. And our answer
14 to that was it would be just like with DNA where there are
15 sort of what I would call internal guidelines that the DNA
16 analysts had created themselves that they work under,
17 where they say you have to do things certain ways. This
18 group would say, "These are the ways you have to do
19 certain things." And then in court you would say, "Do you
20 follow those guidelines?" And you would say yes or no.
21 And then we would bring proof in that we're following
22 those things, bring it to court with us, that we're doing
23 the things that we say that we're doing.

24 COMMITTEE MEMBER TANNEY: So there are more
25 recommendations than there are regulations. Or like you

1 said, internal guidelines that -- the problem we have is
2 how does the court enforce that as far as -- and we
3 discussed this at the first meeting. Cross-examination of
4 witnesses bears on the weight of that evidence. But it
5 does not affect and cannot affect the admissibility of the
6 evidence. So if that's how -- the only way of enforcing
7 it is through cross-examination, then I'm not sure -- and
8 that's going to be done anyway. Regardless of whether the
9 regulations are in place, people are going to be
10 cross-examining on whether the science is conducted
11 properly.

12 COMMITTEE MEMBER LOUGH: Right. And it should
13 really be no different from what we have now where you
14 might say, "Is your lab proficiency tested in accordance
15 with this or in this way?" And you would do that probably
16 on direct. "Yes, we are." "And do have an appropriate
17 degree?" "Yes, I do." Have you had this, that and the
18 other? And we would bring a packet in, and you would
19 simply run through that list. It would be virtually --

20 COMMITTEE MEMBER TANNEY: -- like we do with all
21 the other types of forensic testing.

22 COMMITTEE MEMBER LOUGH: And it would be
23 identical to the same questions that were asked now,
24 except for that first question, "Is your lab licensed?"
25 It would all be -- you know, "Are you licensed and follow

1 the guidelines of Title 17?" Well, now, we wouldn't be
2 licensed but we would still be following those guidelines
3 in Title 17.

4 COMMITTEE MEMBER TANNEY: And I guess my question
5 is, and I think this is -- we may tie it to Mr.
6 Kimsey's -- Dr. Kimsey's question -- is that if there's
7 not a regulatory agency overseeing the enforcement of
8 these regulations, then perhaps they -- and you intend to
9 repeal what is still in here as 100725, then I'm not sure
10 there can be a Title 17 or Title 17 regulations rather
11 than, for instance, ASCLD or CACLD as internal guidelines
12 for forensic alcohol testing.

13 COMMITTEE MEMBER LOUGH: So if there's no
14 enforcer, you can't have regulations?

15 COMMITTEE MEMBER TANNEY: Is Ms. Ruebusch here
16 today?

17 I don't see how. I don't see how they would
18 be -- usually it's either an administrative body or
19 regulatory body that enforces them. And if there is no
20 body that's enforcing them, I don't think you can delegate
21 that to the court without at least judicial council being
22 involved or some sort of authority given to the court to
23 do that. Because that -- for all the cases that don't
24 ever have a court hearing, how are those enforced? It
25 probably --

1 COMMITTEE MEMBER LOUGH: Paul, what about that
2 similar legislation that the --

3 CHAIRPERSON KIMSEY: On Playgrounds?

4 No? Was it the playground or was it the --

5 COMMITTEE MEMBER LOUGH: No. Was it blood banks
6 or -- clinical laboratories, blood bank, where they went
7 to the association's guidelines?

8 CHAIRPERSON KIMSEY: Yes. There are several
9 examples of government adopting professional body
10 regulations: Tissue banks, blood banks. I mean we've
11 done it with blood banks, I believe. And we're attempting
12 to do it with tissue banks.

13 Basically that is where the Department makes the
14 commitment to enforce another entity's -- but, see, again
15 it's an enforcement issue.

16 COMMITTEE MEMBER TANNEY: You still have the
17 authority to enforce?

18 CHAIRPERSON KIMSEY: We still have the authority
19 to -- and, generally speaking, in our other regulatory
20 programs the thing that you're at risk of losing is your
21 license and ability to either be approved or even work in
22 the state or have -- even operate a business in the state.

23 And a lot of times governmental authorities will
24 also -- besides adopting regulations from a private entity
25 or third party, they also work with that third -- can be,

1 you know, deemed to work with that third party. But it's
2 usually a function of a governmental authority being
3 shared with a non-governmental entity. And the government
4 is still, you know, sort of the enforcement side or
5 responsible for, you know, the actions that the government
6 would take with regards to compliance.

7 And, you know, it's fairly clear about that, you
8 know, enforcement responsibility. Now, the regulations
9 can obviously clarify that to say, "Whatever we collect"
10 if they want. But I mean -- and, again, I understand this
11 all starts to sound again like licensing. But if the
12 Department were to register and then say in conjunction
13 with the courts enforce or oversee these regulations, I
14 don't know that we -- I worry that as one department that
15 we are fostering off something on to the Department of
16 Justice, possibly without their knowledge. I mean they
17 should I think be involved in sort of saying, "Yes, we're
18 willing to work with you on this" or something to that
19 effect.

20 COMMITTEE MEMBER TANNEY: And that was one of my
21 concerns when I was reading the regulations, is what if
22 there's a problem with the way a laboratory is conducting
23 their business that doesn't necessarily affect or even
24 concern a criminal -- a pending criminal case? I think
25 normally the Department would write a letter saying, "You

1 need to be in compliance," and try to bring that person to
2 compliance, it's my understanding. And if they don't,
3 then again their license is subject to being suspended.

4 You can't -- to expect the courts to take on that
5 responsibility that any time a citizen or a public
6 person -- member of the public has a complaint, to then to
7 try to file the injunction in court to get that resolved
8 would create an enormous burden, I would think, on the
9 courts to enforce those types of regulations, which may
10 have nothing to do with in an ultimate criminal case
11 that's filed.

12 So I don't -- I understand your dilemma.

13 CHAIRPERSON KIMSEY: Well, and -- you know, we
14 can -- I'm just trying to think. We don't have to solve
15 this obviously today, but it's going to sort keep coming
16 back.

17 I don't think the Department can sidestep the
18 role that seems to be left here for us based on the last
19 legislation. Now, obviously, you know, cleanup
20 legislation, clarifications of this, and maybe in the
21 future might clarify this. But even, you know,
22 legislative intent or analyses with something that clear
23 and still in statute, it's going to be hard for the
24 Department to not need some sort of direction from this
25 group. And, again, that doesn't mean that we have to

1 solve this today.

2 Other comments, perspectives on -- Bruce or
3 Kenton?

4 COMMITTEE MEMBER LYLE: No, I understand the
5 quandary of being an enforcer without being the -- you
6 know, having a play in the beginning part of it. So I
7 think it needs to be addressed.

8 CHAIRPERSON KIMSEY: Okay. Kenton.

9 COMMITTEE MEMBER WONG: We may be able to get
10 some clarification from the Legislative Analyst. It's
11 supposed to call in this afternoon.

12 CHAIRPERSON KIMSEY: You know, if it does -- I
13 think if that does let us know that this was an oversight,
14 that it's still there, that's -- I mean that would be
15 useful information to some extent, but only to the extent
16 that it's something that needs to be resolved at the
17 statutory level. It doesn't -- you know, from the
18 Department's perspective, it doesn't really get us off the
19 hook.

20 Now, this is something -- it just depends on what
21 we think the whole timing here is going to be. We
22 obviously have a lot of other things to be talking about
23 in the regulations.

24 Do we want to just -- how do we want to handle
25 this issue? Do we want to -- obviously we can wait some

1 more and listen to the sort of legislative intent
2 perspective this afternoon. But at some point we're going
3 to probably want to direct a subcommittee to either deal
4 with this issue even in light of the fact that we would
5 hear about possibly some legislative intent to change it,
6 which I guess is, you know, a theoretical possibility.

7 Any other comments on this particular --

8 COMMITTEE MEMBER TANNEY: I think that in light
9 of the statute as it's currently written, which gives you
10 that responsibility, I think this Committee's going to
11 have to consider a registration, so that again you have
12 some mechanism of knowing who's out there performing these
13 types of tests, and being able to enforce the regulations
14 even if the end result is they no longer -- they have
15 their registration suspended or revoked. And then
16 ultimately maybe the court does -- maybe only affected
17 that, but that is to the credibility or the weight of the
18 testimony of any witness that comes from that laboratory.

19 But I mean I understand if you have to have some
20 mechanism for enforcement and part of that is knowing
21 who's performing the tests and part of it is being able to
22 do something about it if they're not in compliance.

23 COMMITTEE MEMBER WONG: So what are you saying,
24 whether calling it registration or licensing is just a
25 semantic difference?

1 COMMITTEE MEMBER TANNEY: No. I think licensing
2 is very different. What -- I think that -- the effect of
3 withdrawing or revoking somebody's license is they can no
4 longer perform. They were both -- the only effect of
5 revoking or suspending their registration is that they can
6 no longer testify in court that they're registered or they
7 would have to say, "Our registration has been suspended."

8 I don't think it would take away their ability to
9 perform the tests. But also it gives the Department a
10 list of the agencies or laboratories that are performing
11 these tests so that they know who's out there doing
12 them -- so that everybody knows who's out there doing
13 them.

14 So, no, it's not -- I think you can avoid it
15 being the same thing as licensing. They're still not
16 doing the proficiency test. They are not having anything
17 to do with that. They're still not -- everything else
18 that I think you intended to take away from DHS oversight
19 I think you can.

20 COMMITTEE MEMBER LOUGH: And there is one
21 advantage to doing that; and that's when you're going to
22 call that meeting every five years, you know who to at
23 least advise at the meeting, "We're thinking of doing it
24 and get representatives."

25 CHAIRPERSON KIMSEY: Now, is this something that

1 we have a consensus on, or do we -- because I'm thinking
2 of -- how would we like to proceed? I mean obviously we
3 can hear the discussion -- the presentation this afternoon
4 if the gentleman's able to call in. Or, you know, we can
5 put this off some more, or we can sort of have the
6 Subcommittee -- or a subcommittee draft some regulatory
7 language based on the conversation that we've just had.

8 COMMITTEE MEMBER LOUGH: I think before we make
9 that decision it would be nice to go back to our notes and
10 documents and see if that was an error and an oversight.

11 CHAIRPERSON KIMSEY: Sure.

12 COMMITTEE MEMBER LOUGH: Just like to check that
13 out.

14 CHAIRPERSON KIMSEY: Okay.

15 COMMITTEE MEMBER LYLE: I'd also like to know if
16 there's a model out there that does this in government
17 somewhere else where there's an enforcing body and then
18 another body -- a separate body that's doing some kind of,
19 you know, investigating of the proficiency and things like
20 that.

21 COMMITTEE MEMBER TANNEY: Well, I can tell you --
22 this has nothing to do with laboratory testing. I can
23 tell you that I've recently been looking at some
24 conservatorship and guardianship issues over elderly
25 individuals. And, frankly, the Department of Justice

1 maintains a registry for professional conservators. They
2 have to register with the Department of Justice. But if
3 they're not -- the conservators -- public conservators do
4 not have to be licensed at this time. And, in fact,
5 there's legislation right now that it is attempting to
6 require some sort of certification or licensing process.

7 Department of Justice, all it does is require the
8 conservators to fill out a form indicating that they are
9 engaging this type of business, indicating whether or not
10 there's ever been any public complaints against them by
11 public sector. And I think there's a few other things
12 that they're supposed to state under penalty of perjury in
13 this registration.

14 The court can then determine whether or not a
15 person's registered when they're appointing a conservator.
16 I don't think that -- I don't know if it's a requirement
17 or not. I don't believe Department of Justice has any
18 oversight as to again competency of the people, which is
19 why there's legislation now. But this is the closest
20 thing I can think of to this type of scenario. And I
21 don't -- I haven't researched that whole subject very
22 thoroughly. I just know of its existence. So I think it
23 would be nice to have more time to look at the feasibility
24 of doing something like that here.

25 CHAIRPERSON KIMSEY: And is it -- your

1 understanding that that's in regulation?

2 COMMITTEE MEMBER TANNEY: There's a statute that
3 deals with the registration.

4 CHAIRPERSON KIMSEY: Okay.

5 COMMITTEE MEMBER TANNEY: There's not a -- I
6 don't know of any regulations at all that pertain to that
7 business. So I don't think there's any
8 regulatory -- there's no regulatory oversight at all.
9 That's what they're trying to gain at this point, because
10 the -- is what they're requiring. But that's a whole
11 other story.

12 So I think at this point all the Department of
13 Justice does is maintain the registry and make those
14 documents available to courts when requested or when
15 required. I don't know.

16 CHAIRPERSON KIMSEY: Okay. Any other comments
17 from the Committee?

18 Yes.

19 COMMITTEE MEMBER LOUGH: It does sound very
20 parallel to what we're discussing doing here. And my
21 concern would be for someone to come up and to get on the
22 registration list to get registered and have some jury
23 think that means that they've been registered and shown to
24 be doing a good job by the state; you know, that false
25 sense of security. So we'd have to -- if that was a

1 way to -- we have to somehow make it clear that -- you
2 know, that you're not --

3 CHAIRPERSON KIMSEY: -- approving these
4 companies.

5 COMMITTEE MEMBER LOUGH: -- approving a person or
6 a facility or something.

7 CHAIRPERSON KIMSEY: Of course there is an
8 inherent assumption, I guess. I don't know. I
9 mean -- you know. But, no, that's --

10 COMMITTEE MEMBER TANNEY: Well, I don't think the
11 Department of Justice attests to any of these conservators
12 that they're doing their jobs appropriately or anything
13 else. I mean it just means that they're indexed basically
14 by the Department.

15 CHAIRPERSON KIMSEY: Okay. Any other comments
16 from the Committee?

17 If not, we'll go to some public comment on this
18 at this point?

19 This is the opportunity for the public to comment
20 on the agenda item where we've been talking about the Role
21 of the Department Enforcing Forensic Alcohol Regulations.
22 You can come down or stand in place, and let us know your
23 opinion.

24 Yes, sir.

25 DR. LEMOS: I'm Nikolas Lemos from the San

1 Francisco Office of the Medical Examiner.

2 I think that registration has an inherent
3 implication of approval. I think indexing is better
4 perhaps. It just -- thank you.

5 Hello.

6 Did everybody get my first comment or do I have
7 to repeat it.

8 CHAIRPERSON KIMSEY: No, we got it.

9 DR. LEMOS: Secondly, the accreditation issue, we
10 could -- if somebody files a complaint, a member of the
11 public, each entity that performs this testing I think
12 should be encouraged to have a national accreditation
13 status. And that can be suspended or completely canceled,
14 I guess, if something has happened that is grotesquely bad
15 for science.

16 And, thirdly, I think I'm concerned about
17 registering or indexing entities that perform testing.
18 What happens to people who -- police officers or others
19 who perform breath testing in the field? Who do we
20 register or index? Who will be responsible? These are my
21 initial thoughts.

22 Thank you.

23 CHAIRPERSON KIMSEY: Yes.

24 MS. WEINGARTEN: I'm Halle Weingarten. I'm in
25 private practice now after many years of public service.

1 And in terms of -- I think you're correct in that
2 you have to have some sort of list. Otherwise I think it
3 ends up in kind of a free-for-all with no sort of
4 oversight or regulation.

5 However, it would be possible to have
6 registration with -- if there's a complaint about a
7 particular provider, there might be -- providers with no
8 complaints or who seems to be in compliance could be
9 registered in good standing; and instead of suspending the
10 registration or delisting them or whatever you would do,
11 then you could say, "Not in good standing." I don't know
12 how else you can do it.

13 I think what you're looking at is in a way a
14 situation where anyone who is out there, who is going to
15 be providing this type of service, without the types of
16 oversight that we've had under licensure in the past, in
17 other words, a provider having to meet certain
18 requirements to become licensed, we have a situation where
19 anyone I think is going to be able to become registered,
20 because you can't screen these folks.

21 And so all the folks that while I was in public
22 service that we used to complain about, laboratories that
23 were kind of fly-by-night laboratories that were doing
24 retesting, for instance, they would easily be able to
25 register and appear to be in good standing unless there

1 were a complaint. So I see that that could also be a
2 negative to this type of process.

3 CHAIRPERSON KIMSEY: Thank you for your comment.
4 Any others?

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
6 Yeah, just -- yeah, go to the public.

7 CHAIRPERSON KIMSEY: Well, you can be public
8 today.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 Yeah, just to go back a bit on the discussions
11 we've been having.

12 Registration was just a component, I believe, as
13 Dr. Kimsey described -- registration was just a component
14 of the Department's response to Section 100725 that says
15 "The Department shall enforce these regulations." So one
16 of the critical components obviously is knowing who's
17 doing the testing. But I don't believe that our
18 discussions -- or your comments were meant to suggest that
19 registration alone would satisfy that requirements of
20 100725.

21 CHAIRPERSON KIMSEY: No, that's true. That
22 doesn't really get to the issue of enforcement. But it
23 does get to the issue of knowing who is doing the work in
24 the state.

25 Any other public comments?

1 Sort of a follow-up on Clay's point. In the
2 other areas where we have regulatory authority,
3 enforcement usually means that there's an opportunity if
4 you're not following certain regulations to lose
5 something. And, again, this just keeps going further down
6 that road of looking more like licensure. Because,
7 generally speaking, one of the things in our other
8 enforcement categories -- areas is that you lose state
9 licensure at some point.

10 Are you familiar with any other sort of
11 enforcement criteria or methods where -- you're either
12 sort of approved or in good standing. And this
13 obviously -- if we do go down the road of registration,
14 that does not really deal with enforcement so much.
15 Again, if we were to do something in conjunction with the
16 courts, but this is something that would have to be, you
17 know, written out in regulation.

18 COMMITTEE MEMBER TANNEY: After thinking about
19 it -- at first I thought the idea of in good standing or
20 not might be a good thing to do. But the more I think
21 about it as I'm sitting here, again without the benefit of
22 having time to reflect on this or research this, if your
23 purpose in registration is not to attest to the
24 qualifications, competency or credibility, then I don't
25 know that you should put a label on it. You should just

1 index everybody who's doing it. And then you can compile
2 the records to demonstrate either that there are
3 complaints and any attempt to enforce the regulations.
4 And then that becomes a file, I guess. I don't know what
5 repercussions that would then have other than in court.
6 But you would have then records of complaints or attempts
7 to have the laboratory gain compliance.

8 And also to respond to -- and I didn't catch your
9 last name. Nikolas I think was your first name.

10 DR. LEMOS: Yes, Lemos.

11 COMMITTEE MEMBER TANNEY: Just based on my
12 comments in general in response to the proposed
13 regulations, I am by no means endorsing the idea of this
14 extending out to police officers in the field. I don't
15 believe that the -- and I'll get to this later -- I
16 believe that the proposed regulations have stepped way out
17 of bounds with respect to that, at least with respect to
18 the comments that were made on those. That would be
19 expanding greatly the scope of the current regulations.
20 And that's not my intention in making these comments.
21 This would be strictly for forensic alcohol laboratories
22 doing blood alcohol testing.

23 CHAIRPERSON KIMSEY: Yeah, and we'll get to the
24 more in-depth discussion about the work product.

25 Okay. So I guess we're leaving this that we're

1 going to have -- hopefully have some clarification on the
2 legislative intent this afternoon. And that maybe before
3 the end of the day we can have some idea of giving some
4 direction to a subcommittee to come up with some ideas or
5 whether it's registration. Anyhow, we're sort of tabling
6 this at this point.

7 Okay. Also in your packet there is -- I think
8 it's towards the back -- there is what's known as the
9 rainbow document, with the -- which was the work product
10 of the Subcommittee. Cathy Ruebusch in our Department,
11 myself and Patty Lough spent a very long day, at least,
12 going over some of these CACLD recommendations and
13 incorporating those into this document. And Cathy was
14 looking at trying to make the regulations compatible or at
15 least this product more compatible with the Procedures
16 Act -- Administrative Procedures Act, which all
17 regulations have to comply with.

18 And we've gotten -- I apologize for the time
19 frames and everybody's ability to review it. This is a
20 rather thick document, or at least there's a lot of
21 information here. And we did get some responses, both
22 from Laura and from the program.

23 Did we get any other comments from the public --

24 FOOD AND DRUG LABORATORY BRANCH CHIEF SOLIMAN:

25 No.

1 CHAIRPERSON KIMSEY: -- or the Committee?

2 And so any comments in general about the work
3 product? Basically, at least in my memory, we set up a
4 subcommittee to incorporate the CACLD comments and look at
5 APA requirements. It does not -- until the Committee, you
6 know, reviews it, it is not really the product of the full
7 Committee. The Subcommittee was trying to sort of provide
8 what I've referred to as a framework for the full
9 Committee to review and look at.

10 And we basically -- we can have some discussion.
11 But it was my perspective to try and sort of help
12 facilitate the workload of the full Committee, that we
13 would sort of review this document for the rest of the day
14 in some capacity or other. And we can -- we can have some
15 discussion how we might want to do that. There's --
16 obviously we have had some comments, and we can go through
17 it.

18 I would note that Article 1 is a lot of
19 definitions, which we will sort of be going through
20 anyhow. And so a place to start might be Article 2, which
21 actually gets into some discussions about breath and
22 alcohol analysis and -- so, anyhow, any comments though
23 about the general subcommittee work product that anyone
24 would like to make?

25 COMMITTEE MEMBER TANNEY: Is this beyond the ones

1 that I've arranged?

2 CHAIRPERSON KIMSEY: No, Those were specifics. I
3 mean is this sort of -- I guess I'm thinking, is this
4 something that we think was useful? Is it something we
5 sort of want to, you know, follow up on? Do we want to
6 use this as a template to work through those types of
7 discussions or do we want to start over?

8 COMMITTEE MEMBER TANNEY: I have a comment in
9 that regard.

10 I think it was useful to have a proposal. I
11 think that affording us essentially 10, 12 days to go
12 through this extensive of a revision does not give us
13 adequate time to look at it, and I indicated that in my
14 response. And then only one week prior to the deadline
15 forgetting the comments posted on the agenda. So for many
16 of us, we have full-time jobs, and it's very difficult to
17 get through it -- through it all. So I would ask that in
18 the future, if we proceed in this way, that we have --
19 either get the comments the same time perhaps the person
20 from OAL gets them or at least three or four weeks ahead
21 of time.

22 CHAIRPERSON KIMSEY: Yeah. No, I apologize for
23 the time frames that we were dealing with here. As you
24 know, we were going to try and have this meeting I believe
25 in late January in Sacramento. And finding a place there

1 to have the meeting and getting all this all together, we
2 didn't really want to postpone the meeting again. And we
3 can have some discussion towards the end of day again
4 about how frequently we want to meet again and what we
5 might -- how you might want to structure that, the
6 workload, with subcommittees or more frequent meetings of
7 this group. But, no, I'm very sympathetic to the fact
8 that we didn't really give folks enough time. And we all
9 have other obligations on our time.

10 COMMITTEE MEMBER TANNEY: I would have liked to
11 have the opportunity to, actually now knowing what types
12 of revisions the Subcommittee wanted to make, is try to
13 come up with some responsive language that might have
14 resolved some of my concerns and still satisfy the
15 concerns of the Subcommittee. But I didn't have the
16 opportunity to do that.

17 CHAIRPERSON KIMSEY: Other comments?

18 COMMITTEE MEMBER SEDGWICK: I think the whole
19 purpose in having a subcommittee was to give us a template
20 to work from. And I think that's why we're here, is to
21 use this.

22 CHAIRPERSON KIMSEY: Okay. Other comments?

23 COMMITTEE MEMBER WONG: Despite the time
24 constraints, I felt the same thing as Laura, is like,
25 "whoa!" But I would like to thank the members of the

1 Subcommittee for all their hard work in setting up the
2 template.

3 CHAIRPERSON KIMSEY: How would the Committee like
4 to proceed? Do we want to just start going through the
5 Subcommittee's product? Do you want to start with Article
6 1 or do you want to go to Article 2?

7 COMMITTEE MEMBER LOUGH: I think there's some
8 main concepts that probably we should address. We talked
9 about a laboratory -- because there were the APA
10 requirements that came up when we were working. And maybe
11 we have to clarify some of those things first, what is a
12 lab? Because a lab is a place, it's not a person or
13 employees. Maybe if there's some questions in those
14 areas. I know in Laura's comments that she posted, you
15 know, some of those are a good place to maybe start where
16 there's some definite issues.

17 COMMITTEE MEMBER TANNEY: I have a couple general
18 comments I'd like to make. Again, with respect to --
19 throughout these proposed regulations, there was the
20 general issue that Patty is talking about with respect to
21 my feeling that you're expanding the scope of the
22 regulations to include law enforcement officers out in the
23 field using breath testing equipment. And I have a real
24 concern about that, number 1.

25 Number 2, I have a concern that you're limiting

1 the regulations to address technology that's available
2 right now as opposed to making more -- considering the
3 fact that new technology is out there that different
4 counties throughout the state are adopting, for instance,
5 the point-of-arrest breath testing apparatus, which is a
6 -- I believe not like a PAS device but like an intox -- I
7 think one of them's called an Intoxilizer 8000 that's used
8 at the point of arrest.

9 And so I think that my understanding also is the
10 standards now might not just be water solutions but might
11 include gaseous solutions. And I think there was some
12 comment with respect to that. I'm not a scientist, so I
13 don't know all the future technology that's coming out.
14 But I think if we're going to write -- rewrite
15 regulations, that we have to take into account those
16 potential changes in technology at least as far as we can?
17 See forward.

18 CHAIRPERSON KIMSEY: Okay. Other comments on how
19 to proceed with the document?

20 I think -- let's see. I didn't really count
21 them. But it looks like, Laura, you had about a dozen or
22 so comments. And the Forensic Alcohol Program at the
23 state has another document that they submitted that has a
24 great larger -- a larger number of comments.

25 Do you want to just start at the beginning of the

1 work product and go through, including the definitions?

2 COMMITTEE MEMBER TANNEY: Sure.

3 CHAIRPERSON KIMSEY: Okay. Then let's see. I
4 guess the first comment really does deal with -- I guess
5 both Laura and the program came up with the enforcement
6 issue, which we have discussed a bit already. And so you
7 want to move on to number -- is there anything else under
8 your A, Laura, that you wanted to refer to?

9 COMMITTEE MEMBER TANNEY: No. I mentioned my
10 concern about that.

11 CHAIRPERSON KIMSEY: Okay. Anything else from
12 the program about the enforcement at this point?

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 Well, that wasn't the first comment in order.
15 The first comment, that was the definitions of breath
16 and -- forensic alcohol analysis.

17 CHAIRPERSON KIMSEY: Are you talking about the
18 definition of forensic alcohol analysis?

19 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

20 Comment number 1 deals with the problems of
21 distinguishing forensic and breaths as two separate
22 entities given the changes in the law.

23 CHAIRPERSON KIMSEY: And that's a concern you
24 also had, Laura?

25 COMMITTEE MEMBER TANNEY: I haven't had the

1 opportunity to read Mr. Larson's comments. I don't know
2 if you're talking about order of the comments with respect
3 to enforcement versus definitions. I included the
4 enforcement issue as my first issue to address only
5 because of the comment made by the OAL representative at
6 the beginning of their -- the regulations. But I don't
7 know that there was a provision in the regulations for
8 enforcement.

9 But I'm ready to go to the definitions.

10 CHAIRPERSON KIMSEY: Okay. You had a concern
11 with 1215.1(b)?

12 COMMITTEE MEMBER TANNEY: Yes, I have concern
13 because to me forensic alcohol analysis is a term that
14 generally should be -- is used throughout courts and court
15 cases to refer to any type of forensic alcohol testing
16 including breath alcohol analysis. I understand what the
17 Committee was trying to do is distinguish forensic alcohol
18 analysis from breath alcohol analysis, which I think needs
19 to be done with respect to regulations, since again my
20 feeling that field breath machine operators should not be
21 included in the regulations or at least to the extent that
22 forensic alcohol analysts are. So I'm not really sure
23 what the solution is, unless you say, "as used in these
24 regulations, forensic alcohol analysis shall only refer
25 to..." But I'm just concerned about making such a broad

1 definition so specific here.

2 CHAIRPERSON KIMSEY: I can throw in sort of a
3 comment from another regulatory program. The federal
4 government back in the eighties decided that under federal
5 law that any place that a laboratory test was done in
6 clinical medicine was considered a laboratory, whether it
7 was a physician office, whether it was, you know, a clinic
8 that didn't really include what they considered a true
9 laboratory.

10 So there are some examples of entities or people
11 doing laboratory tests or doing laboratory testing that
12 aren't in a classic laboratory facility as being roped
13 into a regulatory or -- a regulatory process. Not that
14 I'm advocating that, but just to let you know that in the
15 example of the officers doing that type of testing in the
16 field, under the medical side, I guess the side of the
17 pavement, wherever the test is being done, in the back
18 seat of a patrol car, if it was a human clinical
19 laboratory test, that site would be designated as a
20 laboratory.

21 Other comments on this issue with regards to the
22 definition?

23 COMMITTEE MEMBER TANNEY: I would say -- and I --
24 my understanding of the statutory authority is that the
25 regulations regulate laboratories. I'm not sure -- I

1 think Mr. Larson's the one who wrote the program comments;
2 is that correct?

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
4 (Nods head.)

5 COMMITTEE MEMBER TANNEY: I'm not sure where you
6 indicate the new section refers to laboratories engaged in
7 the performance of forensic alcohol analysis test by or
8 for law enforcement agencies. To me, that governs
9 laboratories. It does not govern police agencies or
10 police officers out in the field. And there's no
11 statutory authority to govern those operators.

12 Now, if the forensic crime laboratories --
13 alcohol laboratories -- excuse me -- want to indicate that
14 they won't certify the results of the breath analysis
15 unless it's done according to these regulations, that's
16 one thing. But I don't think that you can regulate -- you
17 can expand the scope of this to regulate the police
18 officers themselves who are doing the analysis. And the
19 fact is is the machine that -- you know, as long as the
20 calibration of the machine is done properly, as long as it
21 is used properly -- and, again, the regulations have
22 never, as far as I know, tried to regulate the use of the
23 machines, although I know there's a proposal here to do
24 so -- as long as that's done, the machine is the one doing
25 the analysis. Now, the laboratory might certify that as

1 results or approve those results.

2 But, again, I object strongly throughout the
3 proposal to the idea that laboratories would ever include
4 the operators out there in the field, who are not
5 employees of the laboratory. And to try to extend the
6 definition of employees to include police officers is
7 absurd.

8 CHAIRPERSON KIMSEY: Other comments?

9 COMMITTEE MEMBER LOUGH: I think that was -- we
10 stumbled across that from the very beginning when Cathy
11 was explaining to us what was written, what we meant. If
12 you go down to G where it has the definition of forensic
13 alcohol analysts on the actual guidelines.

14 It says originally "a person that's employed by."
15 And so we have that question with Cathy in the beginning:
16 These are not people that are employees of the lab and how
17 can we go around that? And somehow that led to this
18 bifurcation of this separate kind of analysis that can
19 have these separate kind of people. And that was the
20 dilemma we had. How do you -- you know, we're saying
21 forensic alcohol analysis has to be done by these people
22 except when no law enforcement operates the breath
23 instruments.

24 So we just didn't really have a good idea of how
25 to define that separate category of people to still be

1 considered to be valid with the APA.

2 COMMITTEE MEMBER TANNEY: And maybe -- what maybe
3 the solution is, and I have not had the opportunity to
4 think this all the way through, is not to attempt to
5 regulate breath alcohol testing. Because it is in the
6 field because that is where the technology is expanding.
7 And maybe -- and your intent is to limit -- or the
8 statutory authority is to regulate the laboratories. And
9 I don't know to what extent other laboratories are doing
10 breath alcohol testing on -- I don't know if all of them
11 are.

12 And my understanding is that -- at least in San
13 Diego, my understanding is when they go to this new
14 point-of-arrest breath machine, it will then be the
15 responsibility of the field operator to calibrate that
16 machine as well. Whereas previously the Sheriff's crime
17 laboratory, at least in Sheriff's cases, did it, that in
18 the future they have no intention of doing the actual
19 calibration, because that has to be done so frequently --
20 there will be so many of these point-of-arrest machines
21 out there, that it would be an impossibility to have the
22 forensic alcohol laboratory calibrate every machine.

23 Now, they will get the documents demonstrating
24 that they've been calibrated so that when they testify to
25 the results, again they can testify as to the accuracy of

1 the machines.

2 But my understanding is also in Orange County --
3 you're in the Orange County, aren't you? -- that in Orange
4 County they're already using the point-of-arrest machines.
5 Is that true?

6 COMMITTEE MEMBER SEDGWICK: That's correct.

7 COMMITTEE MEMBER TANNEY: And who calibrates them
8 now?

9 COMMITTEE MEMBER SEDGWICK: They're done in the
10 field.

11 COMMITTEE MEMBER TANNEY: So I'm not sure there's
12 a solution if you're planning to include breath alcohol
13 testing in the regulations. But I have not thought about
14 other alternatives would ever work.

15 COMMITTEE MEMBER LOUGH: Okay. There's a
16 difference between what is going on there. In the field
17 the officers are doing a calibration check. They're going
18 through a procedure. They're checking it against some
19 standards solution. But they're not doing anything more
20 than that. And those instruments still come under the
21 guise of a scientific lab. The Orange County -- it's the
22 Orange County Alcohol Unit that says, "Yes, this
23 instrument may be used in the field. And when you do your
24 calibration check, if it falls out of these ranges, you
25 need to be bring it back to us to check." So there's more

1 things the lab does.

2 My fear, and the problem in this whole thing, is
3 if you say, okay, you just go with DOT approved
4 instrument, then every retired law enforcement officer is
5 going to go out and be a breath alcohol service provider,
6 and they'll buy an Intox 8000 and say, "It got calibrated
7 at the factory. Go."

8 And we don't want that to happen.

9 COMMITTEE MEMBER TANNEY: And for clarification,
10 my understanding is the Sheriff's Crime Lab in San Diego
11 will also maintain ultimate responsibility for the
12 equipment.

13 But, again, if you intend to regulate it, you
14 cannot regulate the -- you cannot require the
15 qualifications that you have in here for the officers.

16 COMMITTEE MEMBER LOUGH: So that's where we need
17 you to help us.

18 COMMITTEE MEMBER TANNEY: And having more time, I
19 might have the ability to do that.

20 COMMITTEE MEMBER LOUGH: Yeah. But that is our
21 dilemma. And you can probably give them more time
22 probably to come up with a solution for us.

23 COMMITTEE MEMBER TANNEY: I might be able to.

24 CHAIRPERSON KIMSEY: We had someone with their
25 hand raised in the back. Did you have a comment?

1 Oh, okay.

2 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

3 Yeah. Ms. Tanney didn't have time to read my
4 comments, so let me just read them briefly for you.

5 I think -- the statutes weren't created in a
6 vacuum. They were created with obviously an eye on the
7 existing statutes, existing regulations. The old statutes
8 included Section 100715 that specifically gave the
9 Department authority to regulate the testing of breath
10 samples by law enforcement.

11 That did change. I think critical -- and I've
12 talked to our attorneys, who are just kind of brief --
13 just getting started in this. I think a lot may hang on
14 the word "engaged". If you look up in the dictionary
15 "engaged," a number of the definitions deal with a measure
16 of control. So I believe that the Committee would want to
17 think about whether the intent there was to provide the
18 laboratories some control over breath alcohol analysis as
19 performed by operators. I think it's consistent with the
20 subsequent section the states that those laboratories
21 shall ensure that instruments and calibrating devices are
22 those that are actually listed on the -- so, again, a
23 measure of control is -- I think is implied there.

24 So I think there is -- I would disagree with Ms.
25 -- and, again, we -- our attorneys would respond, I

1 think.

2 But I think there's another viewpoint. I also
3 think that even though 100715 gave the Department absolute
4 authority to regulate law enforcement's use of instruments
5 in breath alcohol analysis, and a number of states take a
6 direct oversight role. Historically the Department hasn't
7 done that. The Department has regulated basically by --
8 there's two components. And, again, a forensic laboratory
9 that bore the brunt of the work and they provided the
10 training to the operators, which these are the procedures
11 that were approved by the Department, and so that sort of
12 defined how breath testing was done, assuming they
13 followed the appropriate training procedures, and they did
14 the periodic testing of the instruments to make sure they
15 were accurate.

16 So I don't know that that has to change much. I
17 don't -- I think a case could be made or a reasonable
18 viewpoint would be that we can continue those same kinds
19 of activities even with the change in the law.

20 COMMITTEE MEMBER TANNEY: I don't have a problem
21 with the laboratories still having again some, as you put
22 it, control over whether or not it's done appropriately in
23 the field. But the way -- but the way these regul -- and
24 I agree that previously there was some ability for the
25 laboratories to again maintain control, as is done in

1 orange county and as is done in San Diego. But my reading
2 of these proposed regulations greatly expands that by
3 again inferring the status of employee of a laboratory to
4 officers out in the field as breath operators. This seems
5 to greatly expand the scope of the previous regulations.
6 So that's my big concern: Isn't maintaining the same
7 degree that they have now, but rather expanding it.

8 CHAIRPERSON KIMSEY: Anyone else comment?

9 COMMITTEE MEMBER LOUGH: Do you recall in that
10 conversation, Paul -- and we probably need to get Cathy in
11 on this one. But when we got to breath alcohol analysis,
12 we were just at a loss for what to call them. Maybe it's
13 the word "analysis" or maybe it's "procedure" or different
14 words we kept putting in here to avoid the employee thing.
15 But if there is a way to call it something different, as
16 tester or --

17 CHAIRPERSON KIMSEY: And what we can do is, I
18 think, sort of -- the consensus of the Committee is to
19 have Subcommittee relook at the use of the word
20 "employee". But would we be trying to keep the same level
21 of oversight that existed previously?

22 COMMITTEE MEMBER TANNEY: Well, it goes beyond
23 just that definition. I mean you have the definition of a
24 "forensic alcohol" -- a "laboratory" means a place that
25 performs activities authorized under the regulations. So

1 any activity -- any activity that's -- I don't know what
2 they mean by authorized under the regulations.

3 CHAIRPERSON KIMSEY: Do we want to add that?

4 COMMITTEE MEMBER TANNEY: I mean it sounds like
5 that includes breath testing. And that means any place
6 that does breath testing and pursued -- was I think
7 Cathy's comments. You can't include jails. You can't
8 include out in the field. That's clearly not what was
9 originally intended by the original regulations as far as
10 including those places to be part of a laboratory.
11 They're not.

12 CHAIRPERSON KIMSEY: Could we define them as
13 something obviously other than a laboratory, like a field
14 environment or --

15 COMMITTEE MEMBER TANNEY: Well, I think that's
16 what it's going to have to be to us, is there's going to
17 have to be more specificity as to what control the
18 laboratory does have. For instance, the laboratory can
19 ensure the -- well, I don't know. I don't want to say it
20 because I haven't thought it through. But there can be
21 specifics. But the problem is the definitions that are
22 created here are too all encompassing, so that they
23 include every aspect of breath testing. And in fact the
24 section that you have for breath operators is inconsistent
25 with other sections that you have that limit the

1 qualifications of anybody doing any breath alcohol
2 testing.

3 And since again it's the machine that does the
4 tests, you could argue that the officers are doing the
5 testing and therefore be regulated under another
6 statute -- or another section that doesn't have the
7 exemption to breath alcohol operators that a different
8 section in here has.

9 So there's some inconsistencies that have to be
10 addressed.

11 COMMITTEE MEMBER LOUGH: And I think Cathy has to
12 be involved in that because she's very --

13 CHAIRPERSON KIMSEY: -- knowledgeable about that.

14 COMMITTEE MEMBER LOUGH: -- well, about what data
15 requires. So -- because she -- the things that we have to
16 write in here were not our original ideas that we have.
17 We're trying to go according to regulations. So we really
18 need legal advice and Cathy and then maybe a science
19 person to --

20 COMMITTEE MEMBER TANNEY: I don't think this was
21 the intention of the Subcommittee to do this, by any
22 means. I think this is just the result of the language
23 that's used.

24 CHAIRPERSON KIMSEY: Sure.

25 COMMITTEE MEMBER WONG: There's obviously a

1 dilemma there between the wording and the intent and the
2 actual practicality, whereby all up and down the State of
3 California breath operators are covered under the auspices
4 of the crime lab. The crime labs maintain the
5 instruments, their accuracy, their calibration. And then
6 the crime labs also train all the officers and certify
7 them for use on whatever breath instruments they would be
8 using out in the field.

9 So under that umbrella there's
10 definitely -- always issues need to be ironed out.

11 CHAIRPERSON KIMSEY: So do we want to give some
12 specific direction to a subcommittee or if a subcommittee
13 were to meet again with regards to this particular area;
14 in other words if we're interested in some sort of field
15 definition or field testing definition?

16 COMMITTEE MEMBER TANNEY: I think this is as
17 specific as I can get because this is again a theme that's
18 common throughout. All of the proposed regulations is to
19 have a subcommittee work on limiting the scope as it
20 applies to breath operators -- breath test operators to
21 what the current regulations now govern.

22 CHAIRPERSON KIMSEY: In other words don't
23 expand --

24 COMMITTEE MEMBER TANNEY: Don't expand this.

25 And, again, keeping in mind that the technology

1 that's coming into play here is technology that allows
2 officers to do things out in the field that they were not
3 traditionally doing with the older equipment. I think
4 that has to be kept in mind.

5 CHAIRPERSON KIMSEY: Does that seem to be a sort
6 of consensus of the Committee with regards to some
7 direction back?

8 Comments from the public?

9 Yes.

10 MS. WEINGARTEN: I think in a sense if you look
11 at the way the old regulations are, in a sense the
12 laboratory was only responsible for certain things, even
13 though they may have assumed other responsibilities. The
14 laboratories were responsible for training the officers
15 for setting up the procedures. I think there are
16 procedures which have been set up that the officers are
17 supposed to follow. The laboratories were responsible for
18 making sure that the instruments were calibrated and so
19 forth. Now, that didn't mean that the laboratory
20 personnel or the analysts went out in the field. Many
21 laboratories used police officers to perform these
22 accuracy checks. So this really has not changed and
23 wouldn't change.

24 In terms of training or certifying the operators,
25 under federal law -- I think there may be something to be

1 learned under the way DOT does it, which is to have
2 qualified personnel, which would be the laboratory
3 personnel, train and certify what they call breath alcohol
4 technicians. And as breath alcohol technicians, they're
5 not employees of the people who train them. They are
6 separate -- you know, they come from separate agencies.

7 So the laboratory would review the records or
8 maintain the records, or not, I guess depending on how the
9 regs are rewritten. And then when a laboratory person is
10 called into court to testify, they could testify based on
11 the records that they see that are provided -- either that
12 they maintain or the police agency maintains.

13 Now, I have to make kind of an aside comment
14 here. I've been hearing about the courts enforcing and
15 paying attention to Title 17. There have been a number of
16 court decisions lately which have been upheld in the
17 appellate level which are appalling in terms of how breath
18 testing is supposed to be accomplished. And that has to
19 do with, for instance, any 15-minute observation period,
20 whether you have duplicates, whether the instruments are
21 maintained or not. These are instruments frequently that
22 are not maintained, that have not had calibration tests.
23 I testified last week on an instrument that hadn't been
24 calibrated for two years and the evidence was still
25 allowed in.

1 So I think there has to be laboratory oversight
2 or at least some sort of laboratory involvement by
3 scientists who understand the importance of doing things
4 like checking to see whether the instrument's in
5 calibration, and at least setting up the methods that the
6 police follow. Once you provide that training -- as a
7 laboratory, you provide this training to the officers
8 about how they are supposed to perform these tests, I
9 don't think that the laboratory is going to -- you know, I
10 don't think that there -- there's a problem with saying
11 these are breath alcohol technicians, they're separate,
12 they're not employees of the laboratory. But the lab had
13 the responsibility and then trained these people and
14 certified them. What happens after that really is going
15 to be settled in the courts. But at least the lab person
16 is going to be able to go to the Court and say, "Look, we
17 trained them, we certified them. But what they did out
18 there, we don't know," or we do know, maybe.

19 But I don't think that -- in that sense that the
20 regulations really -- I don't see a conflict in what we're
21 doing. Maybe just a matter of setting out your
22 definitions. But I think you still want to have the
23 laboratory involved to the extent that it has been
24 involved. I do think that the regulations need
25 clarification -- the old regulations need clarification as

1 to what really applies to breath tests. But, again, it
2 may be just semantics, you know, just changing a few words
3 here and there may take care of the problem.

4 CHAIRPERSON KIMSEY: Yes.

5 COMMITTEE MEMBER LOUGH: You know, one thing that
6 you and I probably didn't do to everyone here was address
7 one of the original comments on how we were going to go
8 about our work preparing this document, because we --

9 CHAIRPERSON KIMSEY: In a subcommittee?

10 COMMITTEE MEMBER LOUGH: The subcommittee with
11 the rest of the Committee or the public.

12 When we met here last as a full committee, I
13 remember Cathy saying -- we talked about taking CACLD's
14 draft and going from there, and she mentioned that every
15 time you want to change a word you have to go through all
16 this approval process. And so we said, okay, let's not
17 change anything but what we have to change.

18 Well, then when the Subcommittee met, we actually
19 had different information that was given to us; because
20 what she explained to us was the original regulations that
21 we were going to try to keep the same are not in
22 compliance with the APA. So we have to go.

23 And that's why we're having all these problems,
24 because each time we would explain to her, "This is why we
25 do it. We want to keep it the same," she goes, "Well, you

1 can't use those words because those words won't work now."
2 So that was kind of why. It's like we want to say we want
3 to keep it the same. Well, then the justification is
4 where she comes in with her expertise and helps us get
5 through the justification for that. And that's why we're
6 bogged down here.

7 CHAIRPERSON KIMSEY: Well, thank you for
8 clarifying that.

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 Just a quick comment on Laura Tanney's comment on
11 the point-of-arrest testing is something new.

12 Regarding point-of-arrest testing, in fact we
13 have approved procedures that involve that kind of
14 portable equipment used in the field five, six, seven
15 years ago. So I believe that the current reg -- even the
16 current regulations, the current program didn't function
17 as an impediment to that kind of testing and I don't think
18 it --

19 COMMITTEE MEMBER TANNEY: I'm not --

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
21 -- will in the future.

22 COMMITTEE MEMBER TANNEY: If I may respond. I'm
23 not concerned as much about the way the current
24 regulations are written as much as I am the proposal.
25 And, again -- the proposed regulations. And, again, it's

1 not my belief that that was the intent as much as it was
2 my belief that that's the way we read it -- the problem.
3 And it has now been created in the proposed regulations.

4 I don't -- is it Ms. Weingarten? Is that how you
5 pronounce your last name?

6 MS. WEINGARTEN: Yes.

7 COMMITTEE MEMBER TANNEY: I have absolutely no
8 problem with the -- maintaining the type of regulation.
9 It's in the prosecution's interest to make sure that the
10 breath tests are done properly out in the field. And
11 training by the laboratory, setting up the methods by the
12 laboratory, certifying the operators, I hope those all
13 stay the way they have been done currently, because I
14 think there's great interest in making sure everything's
15 done appropriately and in a standard procedure.

16 So that's not my concern. My concern is what the
17 language in the proposal does.

18 CHAIRPERSON KIMSEY: Right.

19 We need to take about a three-minute break here
20 while they change the audio CD.

21 Okay, Dennis?

22 (Thereupon a recess was taken.)

23 CHAIRPERSON KIMSEY: It's time to go ahead and
24 reconvene from our little technology break there.

25 I think it also would be helpful -- I think Patty

1 might agree that it would be helpful for the
2 Subcommittee -- if we do use the subcommittee route, that
3 we're quite sure that we're getting clear direction to
4 them. And so does anyone want to sort of summarize what
5 we just talked about? I mean to the extent that I
6 would --

7 COMMITTEE MEMBER TANNEY: Are you proposing that
8 the same subcommittee be involved in --

9 CHAIRPERSON KIMSEY: It's up to how we want to
10 handle this. We can direct a subcommittee. We can ask
11 for more frequent meetings of this group with Cathy
12 present. It's up to our collective direction.

13 COMMITTEE MEMBER LOUGH: I think we need to have
14 a legal advisor at this point to discuss these topics that
15 we're talking about, because the three of us -- you know,
16 Cathy says this is what the regulation -- this is what APA
17 says. And half will do it this way, and we were kind of
18 left with trying to comply with that. So I think it would
19 be nice to put a legal spin on it at this time.

20 CHAIRPERSON KIMSEY: Okay. And you mean legal,
21 are you referring to people that are on the Board that are
22 attorneys?

23 COMMITTEE MEMBER LOUGH: Yes.

24 CHAIRPERSON KIMSEY: Okay. And what we've asked
25 our attorney to do -- the Department's attorney is -- she

1 does represent the Department -- is to take a very high
2 level view of what the statute directs, not so much what
3 the Department's perspective might be with regards to the
4 work of the Committee.

5 Then I'm hearing that rather than go the
6 subcommittee route, we would like to have more frequent
7 meetings of this group with Cathy Ruebusch or someone from
8 our -- from that unit present to sort of advise us on some
9 of the language issues. And that way we don't have this
10 direction from the Committee to a subcommittee. It's sort
11 of the collective Committee consensus in conjunction with
12 Cathy's input.

13 Does that make sense?

14 COMMITTEE MEMBER LYLE: Yes.

15 CHAIRPERSON KIMSEY: Seeing most of you nod.

16 So do we want to meet on a monthly basis, every
17 other month?

18 COMMITTEE MEMBER TANNEY: I think we need to find
19 out the feasibility of having meetings in San Diego.
20 Obviously if I don't have to leave San Diego, I can
21 probably attend them more frequently. So, perhaps we can
22 study that possibility.

23 CHAIRPERSON KIMSEY: I will certainly look into
24 getting a videoconference set up between San Diego and
25 northern California, which would either be here or

1 Sacramento. And --

2 COMMITTEE MEMBER TANNEY: Now, I do have a
3 question. And I don't know if we need a legal advisor
4 here to answer the question. But if, for instance, there
5 was a new subcommittee but it included one member of the
6 old subcommittee and then somebody else, does that somehow
7 violate --

8 CHAIRPERSON KIMSEY: -- Bagley-Keene?

9 COMMITTEE MEMBER TANNEY: Right. Because you
10 originally had two. And then to add one more -- not add
11 one more because you wouldn't have both of the original
12 members. But I don't if that's that chain communication
13 that becomes a problem then.

14 CHAIRPERSON KIMSEY: Actually just thinking here
15 as we're discussing this, I think from my perspective what
16 would be preferable, rather than try and have a
17 subcommittee, that we just try and meet more frequently,
18 with support, you know; and the public is here, everyone
19 can comment. I think as an example, what we've been able
20 to do so far this morning has been very helpful. It would
21 have been obviously more helpful if Cathy could have been
22 helping us through some of that. But I think that would
23 be the preferable route, rather than trying to say the
24 Committee is directing a subcommittee and having a smaller
25 group. I think the full group is a better way to go.

1 So with regards to trying -- so we're not going
2 to necessarily be summarizing. What we'll do is -- we all
3 have transcripts. And we'll talk with Cathy about -- if
4 we are going to meet, let's say, in another month, that
5 based on what we've already done and continue to do today,
6 that she try and incorporate those comments, and that
7 maybe we get out another version based on those comments.
8 But I think the group would like a minimum of a month to
9 go over them, is that --

10 COMMITTEE MEMBER TANNEY: I would like a month to
11 see if I could come up with some language on my own to
12 submit ahead of time, prior to the meeting, to see if some
13 of the concerns that I have can be resolved, and taking
14 into consideration some of the comments from the public
15 also.

16 CHAIRPERSON KIMSEY: Okay. Any other -- so back
17 to -- I'm looking at your document, Laura. Where do you
18 think would be another good place to have a discussion
19 or --

20 COMMITTEE MEMBER TANNEY: You can -- with respect
21 to the comment I made on page 4, subdivision D, the
22 collection, I can withdraw that concern. I see
23 that's -- well, actually I think that it needs to specify
24 breath, because right now I think that it doesn't say
25 blood -- I think it says -- well, let's look. 1219.3(b).

1 In other words I don't know that the units are
2 specified, that we're talking breath rather than blood.
3 But I might be wrong about that. Let's see.

4 No, that's probably okay since we're talking
5 about breath samples. I was originally concerned because
6 I didn't realize that 23152 had the specific indication
7 that the blood alcohol level could be determined by breath
8 alcohol level. And so I had concerns because I was still
9 thinking in terms of blood alcohol. But since the statute
10 specifically addresses breath alcohol, or the gram per 210
11 liters of air, I don't have that concern anymore.

12 CHAIRPERSON KIMSEY: Yeah, Cathy's comment was
13 "Moved from section 1221.4, admitted for clarity,
14 assessing the change of blood to breath. The volumes will
15 need to be provided by the" --

16 COMMITTEE MEMBER TANNEY: Because previously it
17 said -- it just had the grams per 100 milliliters of
18 blood.

19 COMMITTEE MEMBER LOUGH: And that was just a
20 Title 17 update, because they didn't have --

21 COMMITTEE MEMBER TANNEY: Okay. So in other
22 words, what I'm saying is delete my concern, Article 5,
23 subdivision D.

24 CHAIRPERSON KIMSEY: Okay.

25 COMMITTEE MEMBER TANNEY: And pretty much my

1 other comments, they go to specific sections, but they're
2 the same comments that I've already addressed, my concern
3 about the expansion that occurs as a result of these
4 changes. And also I think with respect to definitions of
5 samples or standards.

6 CHAIRPERSON KIMSEY: Do you have concerns about
7 the definitions for "agency" and "employee" are
8 problematic? That was on page 3.

9 And you have "Perhaps the definition of
10 'standards' should not include 'water' and just refer to a
11 'solution'."

12 COMMITTEE MEMBER TANNEY: Because my
13 understanding is there's gas -- there's standards that use
14 some sort of -- some solution other than water. I'll just
15 put it that way. Is that true?

16 COMMITTEE MEMBER LOUGH: Yes, they should be
17 included under the breath alcohol section.

18 So did we not have a definition for it?

19 COMMITTEE MEMBER TANNEY: Well, all the
20 definitions are in the front.

21 COMMITTEE MEMBER LOUGH: Yeah. We did have that
22 somewhere.

23 COMMITTEE MEMBER TANNEY: You do have under your
24 "other definitions proposed" on the last page, you have
25 "reference alcohol/water or a dry gas alcohol sample

1 means" -- this is page 9. You printed out the -- I don't
2 know if you printed out the same for me.

3 COMMITTEE MEMBER LOUGH: It's the --

4 COMMITTEE MEMBER TANNEY: It's the very last page
5 of definitions on the proposal.

6 CHAIRPERSON KIMSEY: Page 9.

7 COMMITTEE MEMBER TANNEY: Yours is in smaller
8 font.

9 But my concern is on page 8, where you say:
10 "'Standard' means a water solution with a predetermined
11 concentration of alcohol." And I think, Mr. Larson, you
12 had some concerns about the definition of "standard" also.
13 Maybe I'm wrong.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

15 No, I had no concerns about that actually about
16 that particular definition.

17 COMMITTEE MEMBER TANNEY: Oh.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 Instruments are calibrated -- or are tested with
20 a reference sample of known alcohol concentration, the
21 only two references in the regulations as proposed -- or
22 the current regulations, the only references to "standard"
23 are with respect to a secondary standard and a primary
24 standard. This is the secondary standard. The definition
25 proposed -- well, I do have some problems actually, I

1 suggest. I take that back. I have some problems with the
2 definitions. And we provided an alternative definition.
3 But the inclusion of the word "water" is not a problem.

4 CHAIRPERSON KIMSEY: And you're concern about the
5 standard definition?

6 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

7 I was concerned about the -- we're jumping around
8 quite a bit here. I was concerned about the definition
9 proposed by the Subcommittee.

10 CHAIRPERSON KIMSEY: And you preferred the old
11 standard definition?

12 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

13 Yes. Formerly that definition was incorporated
14 into the forensic alcohol -- the standards and procedures
15 section. We did recommend that -- as proposed here, this
16 recommended to bring that all under definitions just
17 because it's clearer. But it's essentially the same
18 definition that existed previously.

19 CHAIRPERSON KIMSEY: Okay. And other comments?

20 COMMITTEE MEMBER TANNEY: I thought that -- and
21 the people from the lab -- a representative from the lab's
22 here. Probably no more. But I thought that in my
23 discussion with the San Diego Sheriff's Crime Laboratory
24 individual that they're using standards that are not
25 necessarily used with water, but they're a gaseous.

1 COMMITTEE MEMBER LOUGH: Right. But we did want
2 to include that.

3 COMMITTEE MEMBER TANNEY: But when you -- in your
4 definition of just plain "standard" on the bottom of page
5 8, which is yellowed out, it says, "'Standard' means a
6 water solution with a predetermined concentration of
7 alcohol." It may be as it's used in the regulations, but
8 that's how its used. But, again, you're using a general
9 term then to be specific to only one type of standard, and
10 I have concerns when that's done.

11 COMMITTEE MEMBER LOUGH: Right. And I would have
12 to go look over this order of things, because on the end
13 of those pages we talk about that we need to specify what
14 we mean here, according to Cathy, where it says,
15 "'Reference alcohol/water or a dry gas alcohol sample'
16 means..." So that meant that is something we have to look
17 at to make sure we get that in the definition.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 Just to --

20 COMMITTEE MEMBER TANNEY: Wouldn't it help just
21 to remove "water" and then just say, "'Standard' means a
22 solution with a predetermined concentration of alcohol"?

23 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

24 But, again, the word "standard" is not used under
25 that section referring to reference alcohol, unless you

1 want to change things. The reference is to "reference
2 alcohol or water or dry gas alcohol sample." I have some
3 problems with that. It takes awhile to separate it. But
4 the word "standard" has never been used in conjunction
5 with the test to determine the -- periodically determine
6 the accuracy of breath instruments.

7 COMMITTEE MEMBER TANNEY: And it's not in the
8 regulations anywhere -- in the proposed regulations?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 The word "standard" has never been and it's not
11 here, right?

12 COMMITTEE MEMBER TANNEY: Okay.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
14 What it uses as a word is the "reference sample".

15 COMMITTEE MEMBER TANNEY: But as it's used here
16 in these regulations it's only used to refer to a water
17 solution?

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
19 It's only used to refer to a secondary standard.

20 CHAIRPERSON KIMSEY: Which is in water?

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Which is in water?

23 COMMITTEE MEMBER TANNEY: And always will be?

24 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
25 Well, it's been the requirement of the old

1 regulations to standard of practice.

2 COMMITTEE MEMBER TANNEY: Okay. And that's what
3 I mean about taking into account new technology and new
4 methods.

5 COMMITTEE MEMBER LOUGH: Right. And that entire
6 discussion on its own for this group is to get that
7 definition in here clearly. I mean we want to --

8 COMMITTEE MEMBER TANNEY: So we need to work on
9 that also.

10 COMMITTEE MEMBER LOUGH: It also was -- when we
11 talk about a certified standard, what if you -- there are
12 in other states, not in California, but in other states
13 you can buy your alcohol standard, pop it on the machine,
14 it reads what it says it's supposed to read, it's good to
15 go. And the question is, if it was -- and it comes
16 certified with the manufacturer's certification or
17 somebody's certification on there. And it was -- we
18 discussed at the Subcommittee who is an appropriate agency
19 to certify that? Can it be the manufacturer's cousin who
20 owns the shop that certifies it? You know, does it have
21 to be NIST certified or can it be one step removed
22 certified accountable to NIST? Then that's probably right
23 up your alley there.

24 COMMITTEE MEMBER SEDGWICK: I'd like to take that
25 under advisement and give a lot of thought to it. I'm

1 learning from Laura.

2 But the bottom line is there are private
3 companies that provide standards. Sometimes they're not
4 always accurate. Requiring a NIST certification that is
5 directly relatable to a NIST certified chemical would
6 probably be very reasonable. It's what most laboratories
7 are doing now. And they buy standards -- I'm sorry --
8 they buy quality control samples, quality samples,
9 performance samples, if you will but not -- they do not
10 buy standards that are used to analyze the QC samples.

11 CHAIRPERSON KIMSEY: But we know that some
12 companies providing these types of reagents, that they're
13 not very accurate, is that --

14 COMMITTEE MEMBER SEDGWICK: It's not that they're
15 not accurate. It's just that in my experience
16 occasionally they make them up wrong. Sometimes they're
17 very accurate for a very long time. But if you are
18 relying on those to do all -- to determine all of the
19 goodness of all of your other analyses, you have to have
20 some certification that is very stringent and very strict.
21 A NIST certification should be that.

22 CHAIRPERSON KIMSEY: Or at least in this
23 traceable sort of situation. Because I think -- well, it
24 gets into detail of what NIST actually provides, but...

25 Other comments under the definition? We're still

1 on -- pretty much on Article 1.

2 COMMITTEE MEMBER LYLE: There's a lot of
3 discussion about the place of where -- a forensic alcohol
4 laboratory being a place. Does it necessarily have to be
5 a place, or it could be an entity?

6 CHAIRPERSON KIMSEY: Right. And what page is
7 that on?

8 COMMITTEE MEMBER TANNEY: Three.

9 COMMITTEE MEMBER LYLE: It's on three.

10 COMMITTEE MEMBER LOUGH: And that was Cathy's
11 question, is whenever we said a lab will do this, she
12 goes, "But the lab is just a place, it's not a person."
13 So do you make that the lab -- then do you define
14 that the lab director is responsible, do you define that
15 you have the old system person responsible for alcohol
16 analysis is the person? And that's all still part of that
17 same dilemma.

18 COMMITTEE MEMBER LYLE: Who is it now?

19 COMMITTEE MEMBER TANNEY: Under this definition
20 it would include -- could include a JL. And I don't think
21 that's the intent. So I think this is one of the
22 sections -- I think a lot of these definition sections,
23 especially that one, that and the breath alcohol -- no,
24 I'm sorry. I think that's the main one that needs the --
25 that addresses the problem or has the problem that I

1 talked about with respect to law enforcement. So I
2 skipped over that. The same with forensic alcohol
3 analysts. Those kind of go hand in hand. And those need
4 to be worked out in the future in light of the comments
5 with respect to whether or not they govern law
6 enforcement.

7 CHAIRPERSON KIMSEY: Right.

8 COMMITTEE MEMBER TANNEY: And I suppose we can
9 sit here and try to come up with alternative language or
10 we can do that for the next meeting.

11 CHAIRPERSON KIMSEY: Yeah. No, I think we can do
12 that with Cathy's input. I don't think we need to
13 struggle with that. But I -- our concern is that a
14 definition meaning a place is too general at this point.
15 We need something more specific.

16 And the concern about agency I think was the
17 same.

18 COMMITTEE MEMBER TANNEY: Yes.

19 CHAIRPERSON KIMSEY: Because I think the way we
20 have it now an agency -- and this is on page 7 -- bottom
21 of page 7 and on to 8.

22 Any other concerns on the definitions in Article
23 1?

24 COMMITTEE MEMBER TANNEY: So right, breath -- at
25 the proposed breath alcohol operator, I had a problem with

1 the definition of for the same reasons again, because it
2 requires --

3 CHAIRPERSON KIMSEY: Too general?

4 COMMITTEE MEMBER TANNEY: Well, no. The same
5 thing about it being an intent to regulate the law
6 enforcement officers out in the field. And I'm not
7 sure -- the training specified in 1221.4(a)(3) I thought
8 was --

9 COMMITTEE MEMBER LYLE: Page 31?

10 COMMITTEE MEMBER TANNEY: Page 31? Thanks.

11 I don't have a page 31 anymore. I got them out
12 of order.

13 COMMITTEE MEMBER LOUGH: 1221.4.

14 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

15 The page numbers in everybody's packets should be
16 the same.

17 COMMITTEE MEMBER LOUGH: Here's the one that's in
18 our packet they gave us. This goes back --

19 COMMITTEE MEMBER TANNEY: Where's the training --
20 it says the training in that section.

21 COMMITTEE MEMBER LOUGH: It comes after that.

22 CHAIRPERSON KIMSEY: It's not on page 31?

23 COMMITTEE MEMBER TANNEY: I don't have my page 31
24 for some reason at this point. Somehow it's out of order.

25 COMMITTEE MEMBER LOUGH: Well, can you -- here's

1 my small one, this part.

2 COMMITTEE MEMBER TANNEY: That's (a) (2). It
3 refers to (a) (3). Maybe you meant (a) (2).

4 No, I didn't have a problem with that. I guess
5 my concern was more general about the scope of the control
6 over --

7 COMMITTEE MEMBER LOUGH: Oh, it is, because
8 here's Cathy's comments down here. Here's what we
9 proposed. This is what we proposed and here's her
10 comments.

11 CHAIRPERSON KIMSEY: And what was that page?

12 COMMITTEE MEMBER TANNEY: Twenty-four.

13 COMMITTEE MEMBER LOUGH: Well, it's my 24 because
14 I put it in small font.

15 CHAIRPERSON KIMSEY: Oh, I see. You printed out
16 your own.

17 COMMITTEE MEMBER LOUGH: It is --

18 COMMITTEE MEMBER TANNEY: I think that my concern
19 was the use of the breath alcohol testing machine.

20 COMMITTEE MEMBER LOUGH: Under 1221.4 --

21 CHAIRPERSON KIMSEY: Standards of --

22 COMMITTEE MEMBER LOUGH: -- breath alcohol.

23 CHAIRPERSON KIMSEY: Standards of breath alcohol.

24 COMMITTEE MEMBER LOUGH: And it was for a breath
25 alcohol analysis.

1 And then if you go down there to where there's a
2 bunch of -- a large -- there's a number 2 with a long
3 yellow. And then there's -- Cathy has some red.

4 CHAIRPERSON KIMSEY: Right. This is where
5 there's -- she's pointing out there's difficulty with a
6 place.

7 COMMITTEE MEMBER LOUGH: Right. Because what we
8 proposed was the yellow part that Cathy's noting the
9 regulatory requirements in red.

10 CHAIRPERSON KIMSEY: Right.

11 Okay.

12 COMMITTEE MEMBER TANNEY: Also I think that that
13 section included the use of the breath alcohol
14 instruments, and I'm not sure.

15 COMMITTEE MEMBER LOUGH: To perform the test?
16 To perform it?

17 COMMITTEE MEMBER TANNEY: Right. That's what I
18 put in my comments: "There's no authority for a proposal
19 that requires forensic alcohol laboratories to oversee the
20 use of breath alcohol testing instruments." And then I
21 wrote, "This could potentially have fiscal implications
22 and unnecessarily affect the ability to collect evidence."

23 I'm not sure now what I was thinking about.

24 COMMITTEE MEMBER LOUGH: And you cannot -- this
25 is the existing, this first yellow. The second yellow is

1 what we proposed. So operators who did not meet the
2 requirements under the training -- under a program
3 supervised by laboratories" --

4 COMMITTEE MEMBER TANNEY: No, I don't have a
5 problem with that.

6 CHAIRPERSON KIMSEY: Right. Also it looks like
7 1221.42, the yellow there talks about: "Breath alcohol
8 analysis shall be performed only with the instruments for
9 which the operators have received training, such training
10 to include a minimum of the following schedule of
11 subjects:"

12 COMMITTEE MEMBER LOUGH: Right. That first
13 yellow block is the existing. The next yellow block is
14 the language that CACLD proposed. And on the very bottom
15 in red is what Cathy said APA issues.

16 COMMITTEE MEMBER TANNEY: I know what some of my
17 concern was, and it's kind of out of order. But it goes
18 back to this, which is in the qualifications of the
19 forensic alcohol analyst, it basically says: "To perform
20 a forensic alcohol analysis or a breath alcohol analysis,
21 a forensic analyst shall:" -- and then possess a
22 baccalaureate degree, have some scientific training in
23 some science or a degree in science.

24 And those -- the way it's all drafted and taking
25 it in its entirety looks like it's imposing a requirement

1 that all police officers have a science degree, which we
2 don't want to do exactly. And so that's why I think that
3 my comment with respect to the other definitions proposed,
4 breath alcohol operator means a forensic alcohol analyst
5 or other person who has completed the training, I
6 understand -- and this is what I was talking about their
7 being some internal inconsistencies, where if you were
8 saying one thing on the one hand, that they require this
9 degree, and then some are completely different, you have a
10 definition for an operator. So that has to somehow be
11 brought together so that there's not an inconsistency and
12 it doesn't in effect do what we're not intending to do.

13 CHAIRPERSON KIMSEY: Okay.

14 COMMITTEE MEMBER LOUGH: I think -- I'm not sure
15 where this yellow comes in. But in this same part where
16 it talks about the forensic alcohol analyst, who meets the
17 qualifications, then we tried to propose something called
18 a breath alcohol operator, we're trying to bring in some
19 kind of wording?

20 COMMITTEE MEMBER TANNEY: Right. I think you're
21 trying to distinguish them. And you do in the definition
22 section. But I'm not sure that's done in the actual
23 regulations.

24 COMMITTEE MEMBER LOUGH: Okay. And it all kind
25 of goes back to that same --

1 COMMITTEE MEMBER LYLE: So are you trying to make
2 the operator the field deputy or the officer and an
3 analyst be somebody in the lab?

4 COMMITTEE MEMBER TANNEY: Right. I think that
5 what they're doing.

6 COMMITTEE MEMBER LYLE: Because in this
7 definition it adds both of the analyst and -- or other
8 person.

9 CHAIRPERSON KIMSEY: What page is that?

10 COMMITTEE MEMBER LYLE: That's on 7.

11 COMMITTEE MEMBER LOUGH: The lab person might do
12 the testing. We wanted to then give the -- say, well,
13 they can also do a test. But then you have these other
14 non-technical...

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 You know, I think that was fairly clearly stated
17 in the old regulations. So people went -- my comment --
18 the Program's Comment No. 83, 1221.4(a)(5), I think --
19 first, I'm surprised -- I wish Cathy was here. I believe
20 that this is an OAL standard, that the definitions section
21 not impose any requirements. I think in a couple cases it
22 does. Maybe that's changed. But that -- we did
23 regulations in the past, that was clearly a requirement.

24 So, anyway, the actual requirements were
25 previously stated in Section 1221.4(a)(5), it says an

1 operator shall be a forensic alcohol supervisor -- and we
2 have a series of qualifications -- analyst, trainee or a
3 person who's completed training that's described under
4 Section 1221.4(a)(3).

5 COMMITTEE MEMBER LOUGH: Cathy's issue was, when
6 you go back to where it says the lab or its employees, and
7 that's where she got hung up as soon as it said only the
8 lab or its employees can do these things. Then we said,
9 well, what do we call these officers -- just the
10 operators? And it all related back to that word
11 "employee," because they're not lab employees. And I
12 said, "Well, can't the lab delegate?" And there was an
13 issue. So that's -- really Cathy has to meet with the
14 Subcommittee on --

15 COMMITTEE MEMBER TANNEY: All right. I recall
16 now reading that. But the concern is with the new
17 legislation, that it may not -- it may not -- because the
18 legislation only allows you -- us, this group, to develop
19 regulations that insure the accuracy and competency of the
20 laboratories. And there's no indication or statutory
21 authority for us as a committee to develop regulations
22 that have anything to do with law enforcement. And so I
23 think this maybe was Cathy's creative way, although she
24 recognized the problem of bringing them in.

25 And so even though we want -- we might want the

1 same training and oversight that the crime lab has always
2 had, I'm not sure we can do that because of the way the
3 legislation is written out. And that's what appears to be
4 Cathy's comment.

5 But I think that her -- that her creative way of
6 addressing that is doing more harm than good by expanding
7 it.

8 CHAIRPERSON KIMSEY: Well, unless there are any
9 more comments on that particular area, why don't we go
10 ahead and break for a half hour for lunch. I don't
11 recommend going off campus. It's just going off and
12 coming back, you know. There's cafeterias just out in the
13 front here and to the right.

14 Is half hour sufficient or -- well, it shouldn't
15 be too bad right now.

16 And also I caution you, if you step outside the
17 building like for a cigarette break or something, a lot of
18 these doors lock behind you. If you don't have one of the
19 electronic badges. So if you do want to leave, you can go
20 out the front door again and go to your car or whatever.
21 Or you may find yourself walking around or stuck outside.

22 But why don't we convene back here at about 15
23 after 1.

24 (Thereupon a lunch break was taken.)

25

1 AFTERNOON SESSION

2 CHAIRPERSON KIMSEY: Okay. Why don't we go ahead
3 and resume. It's about 1:15.

4 I hope everyone had a good lunch, if not a quick
5 one.

6 We have about two hours or so left. In fact,
7 what are people's plane commitments and things? When
8 would people like to be able to leave?

9 (Laughter.)

10 CHAIRPERSON KIMSEY: Other than as soon as
11 possible.

12 COMMITTEE MEMBER SEDGWICK: Actually if we can
13 get out a little early, that would be perfect. It will --
14 we've always been able to switch over to an earlier
15 flight. If we get out late, I guess we're going to be
16 leaving at 7:30 or 8 tonight.

17 CHAIRPERSON KIMSEY: Oh, no. We don't want to do
18 that.

19 How about San Diego?

20 COMMITTEE MEMBER TANNEY: I think our flight
21 leaves at 5:40. We too can catch an earlier one if that
22 opportunity presents itself. But --

23 CHAIRPERSON KIMSEY: Well, we can have that
24 discussion. I've left Cathy another voice mail. So I
25 didn't catch her directly.

1 I would say we probably have about, you know, two
2 hours, an hour and a half of time. And I think we had
3 some good discussions this morning. I think my
4 perspective would be that the more general they were, the
5 better they were. I mean as we got into sort of some of
6 the detailed language issues, it really would be helpful
7 to have Cathy on the line.

8 But what is the feeling of the group? How would
9 you like to spend the next hour and a half or so? I know
10 we have the possibility of a gentleman calling in at 2,
11 which can help us get back to some of the legislative
12 intent ideas and discussions of, you know, some of the
13 bigger picture issues. But prior to that point, what's
14 the group feel would be a worthwhile use of our time?

15 We've had an area that we had -- some of the
16 discussion this morning I think covered most of anything
17 we would say about, you know, enforcement and that sort of
18 thing. So do you want to talk a bit about proficiency
19 testing in general or --

20 COMMITTEE MEMBER LOUGH: Oh, right, yes.

21 CHAIRPERSON KIMSEY: Okay. That hit a nerve.

22 COMMITTEE MEMBER LOUGH: Yeah, I -- we had talked
23 with Mary Soliman on that three weeks ago maybe.

24 And whether or not laboratories can use the -- in
25 place of using the state proficiency tests, we're using

1 the ASCLD-LAB approved providers for that. And she had
2 taken that to her legal folks. And they couldn't come to
3 an agreement, so I think she wanted the Committee to take
4 a look at that and maybe make a decision or a
5 recommendation.

6 CHAIRPERSON KIMSEY: Okay. And that was
7 specifically around substituting an ASCLD-approved lab for
8 the State Proficiency Testing Program?

9 COMMITTEE MEMBER LOUGH: Right.

10 CHAIRPERSON KIMSEY: I thought we did get a legal
11 opinion on that. Didn't we send out a letter on November
12 the 10th -- sometime in November?

13 COMMITTEE MEMBER LOUGH: Yes. And then I
14 submitted a response to that letter. And then she took it
15 I guess to legal. And I assume she'll be here shortly.

16 CHAIRPERSON KIMSEY: Okay. That's one thing we
17 can cover.

18 Anything else?

19 COMMITTEE MEMBER TANNEY: I'm just wondering
20 about the articles that don't have any comments or --

21 CHAIRPERSON KIMSEY: We have an article with no
22 comments?

23 COMMITTEE MEMBER TANNEY: Well, the repeal of the
24 licensing procedures.

25 CHAIRPERSON KIMSEY: Well, that's true. That's

1 fairly clear in the legislation.

2 COMMITTEE MEMBER TANNEY: So Article 3.

3 I think if we have a consensus on some of the
4 provisions in here.

5 CHAIRPERSON KIMSEY: I know I'm going to -- we
6 thought about starting with Article 2. That basically
7 dealt with the discussion we had this morning about
8 forensic alcohol analysis and breath alcohol analysis.

9 COMMITTEE MEMBER TANNEY: And I think Articles 3
10 and 4 are both repealed -- or deleted because of the
11 repeal.

12 CHAIRPERSON KIMSEY: Right.

13 COMMITTEE MEMBER TANNEY: So I'm just wondering
14 if anybody has any objection to these.

15 CHAIRPERSON KIMSEY: What page is that?

16 COMMITTEE MEMBER TANNEY: Page 16 through 19.

17 COMMITTEE MEMBER LOUGH: Now, are we allowed to
18 vote if we're not all present. We can vote and then get
19 the other roll call?

20 CHAIRPERSON KIMSEY: I would assume so, yeah.

21 COMMITTEE MEMBER TANNEY: Well, I don't even mean
22 necessarily vote, but at least discuss whether or not
23 there's any concerns. I mean I'd still like to reserve
24 them for if there were any future comment, just based
25 on --

1 COMMITTEE MEMBER LYLE: Well, we can send
2 tentatively agreed --

3 COMMITTEE MEMBER TANNEY: Yeah, that's what I'm
4 thinking.

5 CHAIRPERSON KIMSEY: Well, I would certainly
6 think that Article 3 is consistent with the legislation.

7 Any comments from the public on Article 3?

8 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

9 Yeah, actually Article 3, there was one comment
10 from Program. It was in Endnote 25 under 1217.3. It
11 noted that a subsection was inadvertently omitted there.
12 And it's explained under Endnote 25.

13 It is a subsection that describes the
14 requirements that when an individual transfers from one
15 laboratory to another, that the Department was then
16 authorized to require that individual to take another
17 proficiency test at that new laboratory.

18 So, it's under the section Licensing.

19 To the extent there are other comments -- there
20 are other proposals by the Forensic Alcohol Program
21 that -- under subsequent articles that some of the
22 personnel qualifications be -- the Committee consider
23 retraining some of those -- retaining some of those
24 personnel qualifications. To the extent that it agreed to
25 do that, it would need to consider then the existing

1 requirement that those qualification requirements get
2 invoked when somebody goes from Lab A to Lab B. It just
3 turned out that was a section that was inadvertently
4 omitted from the regulations -- from the draft
5 regulations. So it would make it difficult for the
6 Committee to examine that and comment on it.

7 COMMITTEE MEMBER LOUGH: What was that number,
8 Clay, the governmental?

9 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
10 Sub --

11 CHAIRPERSON KIMSEY: -- 1217.3(c).

12 COMMITTEE MEMBER LOUGH: Oh, okay.

13 CHAIRPERSON KIMSEY: And it's Program's Comment
14 No. 25.

15 CHAIRPERSON KIMSEY: Okay. How does the
16 Committee feel about the requirements for training of
17 personnel? I mean obviously that's also been pretty much
18 repealed.

19 COMMITTEE MEMBER LOUGH: I think it's covered
20 though under 1216.2.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 Training of personnel is under Article 4. So
23 it's 1218.

24 COMMITTEE MEMBER LYLE: So you guys folded it
25 into Article --

1 COMMITTEE MEMBER LOUGH: -- 1216.2.

2 CHAIRPERSON KIMSEY: The qualifications of
3 forensic alcohol analysts?

4 COMMITTEE MEMBER LOUGH: And if you looked at --

5 COMMITTEE MEMBER TANNEY: Yeah, but this is -- I
6 think this is for the programs so anybody who's
7 teaching -- that says what they have to be taught. This
8 says who teaches it.

9 COMMITTEE MEMBER LOUGH: And I was looking at
10 licensing. Maybe I'm looking in the wrong place.

11 COMMITTEE MEMBER SEDGWICK: Both say the same
12 thing. When a person is trained in a laboratory, they're
13 trained using that laboratory's methods. If they go to
14 another laboratory, by what's in 1216.2, they have to be
15 trained in that laboratory's methods and demonstrate their
16 competency.

17 COMMITTEE MEMBER LOUGH: That's 1216.2.

18 CHAIRPERSON KIMSEY: And so that training is
19 going to be left up -- there's not going to be any
20 government oversight of that training at this point?

21 COMMITTEE MEMBER LOUGH: That's correct.

22 CHAIRPERSON KIMSEY: That's pretty much left up
23 to the entity, the laboratory.

24 It's my understanding that, you know, that's -- I
25 mean a lot of states do provide some sort of state

1 oversight of training or approval of training.

2 Are there areas that were completely deleted?

3 Where did the on-site inspections come under?

4 That was also in the legislation.

5 COMMITTEE MEMBER LOUGH: 1217.6?

6 CHAIRPERSON KIMSEY: So that was under the
7 licensing. Okay.

8 In Article 5 where there's -- it covers
9 collection and handling of samples, is there sort of a
10 general discussion that you want to have?

11 Retention for one year, is that pretty much
12 standard in the industry?

13 COMMITTEE MEMBER SEDGWICK: That's pretty common.

14 CHAIRPERSON KIMSEY: That's page 21.

15 And retention would be by the laboratory?

16 COMMITTEE MEMBER LYLE: So is that an antemortem
17 sample or is that any kind of a sample?

18 CHAIRPERSON KIMSEY: At this point it seems to be
19 any type of sample.

20 COMMITTEE MEMBER TANNEY: There's a --

21 COMMITTEE MEMBER SEDGWICK: There's a separate --

22 COMMITTEE MEMBER TANNEY: There's a separate
23 section on --

24 COMMITTEE MEMBER SEDGWICK: -- coroner's samples.

25 COMMITTEE MEMBER LYLE: Yeah, I was a little

1 confused about what the difference between a coroner's
2 sample and then the other ones were. I mean I understand
3 what a coroner's case is. But I guess I didn't see the
4 time when there was a defendant and a postmortem sample
5 and it was not -- a postmortem sample was not a coroner's
6 case. Because if there's a defendant, then somebody
7 caused the death or had a play in the death. And if
8 somebody had a play in the death or caused the death, then
9 the coroner would be involved. And if not, who's taking
10 that sample from the dead person if not the coroner?

11 COMMITTEE MEMBER LOUGH: Well, yeah, you would
12 have all the dead ones. But, say, if there was another
13 person involved in that that may have caused that
14 accident, that would not be your sample. And then that
15 would be held for a minimum of at least one year then.

16 COMMITTEE MEMBER LYLE: Okay. So we're talking
17 about the --

18 COMMITTEE MEMBER LOUGH: Yours are simply your
19 cases.

20 COMMITTEE MEMBER LYLE: Right.

21 COMMITTEE MEMBER LOUGH: I think we did
22 originally have that set at a year or longer or something.
23 Now, did you --

24 COMMITTEE MEMBER LYLE: Yeah. I didn't like
25 that, yeah.

1 COMMITTEE MEMBER LOUGH: Right.

2 And I think in reality most labs, if you have
3 something that's related to a homicide or a felony, is
4 going to keep their samples longer.

5 COMMITTEE MEMBER LYLE: Right.

6 COMMITTEE MEMBER SEDGWICK: Okay. I had a
7 comment under Article 5, 1219.1, new designation F. "In
8 order to allow for analysis by the defendant, the
9 remaining portion of the sample shall be retained for one
10 year." The question is: "By whom?" In talking with
11 our -- with Orange County Sheriff Blood Alcohol Section,
12 their feeling is by either the forensic alcohol laboratory
13 or the submitting agency.

14 There might be a circumstance -- I can't think of
15 a circumstance when there would be any other person, but
16 there are cases where these samples can be sent back to
17 the agencies.

18 COMMITTEE MEMBER LOUGH: And that happens I
19 believe a lot in the DOJ lab. I think DOJ Riverside at
20 least had a license and they sent them back to the agency.
21 They can't store them.

22 I'm not sure -- Laura, tell me -- is the evidence
23 actually -- does the evidence belong to the arresting
24 agency, so -- can the arresting agency choose to delegate
25 if they wish a lab to be able to maintain it with the

1 arresting agency or whom they delegate?

2 COMMITTEE MEMBER SEDGWICK: Well, more to the
3 point might be: Why do we care who retains it, as long as
4 it's retained in a safe manner and is available for
5 defendants?

6 COMMITTEE MEMBER LYLE: And do we have to
7 regulate who retains it?

8 COMMITTEE MEMBER LOUGH: These questions are from
9 Cathy, that these are things that are -- to her they're
10 glaringly obvious we need to fill in those.

11 COMMITTEE MEMBER SEDGWICK: Well, in the
12 original, when it was written in 1969, just says it has to
13 be retained.

14 COMMITTEE MEMBER TANNEY: How is it done then
15 different throughout -- throughout the state, it sounds
16 like.

17 COMMITTEE MEMBER LYLE: Um-hmm.

18 COMMITTEE MEMBER LOUGH: So you have to be
19 careful.

20 COMMITTEE MEMBER LYLE: Paul, do you hold any --
21 in a blood alcohol lab do they hold samples for other -- I
22 know you hold our samples for a given amount of time and
23 then you send them back and --

24 COMMITTEE MEMBER SEDGWICK: We hold every sample
25 that's submitted to us, regardless of by whom, for 14

1 months. And we give it that extra two months --

2 COMMITTEE MEMBER LYLE: And then do you discard
3 it or do you give it back?

4 COMMITTEE MEMBER SEDGWICK: We discard it.

5 COMMITTEE MEMBER LYLE: Okay.

6 COMMITTEE MEMBER SEDGWICK: And it fills up large
7 freezers very rapidly.

8 COMMITTEE MEMBER LYLE: Then that may not be
9 feasible for another lab somewhere else.

10 COMMITTEE MEMBER SEDGWICK: And that's why some
11 agencies send it back -- or some of the forensic alcohol
12 laboratories send it back. But --

13 COMMITTEE MEMBER TANNEY: But it also may be that
14 some agencies might not have the capability of storing it
15 either -- looking at some small --

16 COMMITTEE MEMBER SEDGWICK: It doesn't specify
17 how to store.

18 COMMITTEE MEMBER LYLE: Yeah. I think for
19 language though it could just say either by a laboratory
20 or, you know, the generating agency or whatever.

21 COMMITTEE MEMBER SEDGWICK: Or just not even
22 specify who. As long as it's available, I think the
23 defense community would prefer that it be stored in a
24 safe, secure fashion. But I don't think they care who's
25 doing it as long as it's demonstrated that it's safe

1 there.

2 COMMITTEE MEMBER LYLE: But I think Cathy's
3 including a "by whom?" means that she'd prefer that there
4 was some sort of direction in there, some kind of
5 clarification.

6 COMMITTEE MEMBER LOUGH: And then her next
7 question: "Can anyone else use this sample?"

8 So if you've got the sample to do an alcohol
9 analysis and now there's going to be some toxicology done
10 on it, but now it's being stored, can it be used? So
11 these are things that she's coming up with.

12 COMMITTEE MEMBER LYLE: Right. So maybe it ought
13 to say, "in order to allow for subsequent analysis" and
14 not by who.

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 The Committee should keep in mind 1219.1 --
17 current section 1219.1(g)(2) deals with: Whenever a
18 sample is requested by the defendant for analysis and a
19 sufficient sample remains, then it gives two agencies that
20 would be required to provide that sample. One's a
21 forensic alcohol laboratory, the other is a law
22 enforcement agency. So I think somebody contemplated that
23 one of those two.

24 COMMITTEE MEMBER LOUGH: And I think by "law
25 enforcement" that should probably say "arresting agency."

1 It may be some other type. It could be a school police.
2 That's law enforcement, but maybe not in the traditional
3 sense.

4 CHAIRPERSON KIMSEY: Does this labeling issue
5 become important, or is that something that --

6 COMMITTEE MEMBER LOUGH: Yes.

7 COMMITTEE MEMBER TANNEY: As far as labeling what
8 it's for? Is that what you mean?

9 CHAIRPERSON KIMSEY: Well, it just says here,
10 "identifying the information carried on the original
11 sample container." And then Cathy points out:

12 Nothing in the regulation specifies labeling of
13 samples.

14 Do you want to make this specification?

15 Why is it necessary in regulation, or is it just
16 a standard practice?

17 COMMITTEE MEMBER LOUGH: I think there should be
18 minimal information on there. Because a lot of these have
19 a lot of information, but you at least need to have the
20 subject's name and some individual identifying number.

21 COMMITTEE MEMBER TANNEY: My understanding also
22 is before a lab turns anything over to a defense attorney,
23 it's by order of the court. So isn't there a court order
24 required to split a sample?

25 COMMITTEE MEMBER LOUGH: That's a question that

1 has come up in the past. And I think it's probably in
2 here somewhere. Because this says that you'll split the
3 sample and release it if the defendant asks for it. And
4 that was the question I brought up I think at our
5 meetings, Clay, a long time ago. It doesn't specify that
6 procedure to run it through.

7 COMMITTEE MEMBER TANNEY: And so currently I
8 believe that anything taken by law enforcement as evidence
9 is really subject to the court. In a sense, it's in a
10 court's -- at least anything taken by search warrant. And
11 I realize this isn't a search warrant. But I'm trying to
12 think if this expands to other items that, if it's taken
13 as evidence in a case, it's subject to the court's --
14 disposition by the court. And so in San Diego the defense
15 has to bring a motion to the court to get a split --

16 COMMITTEE MEMBER LOUGH: Okay. That's --

17 COMMITTEE MEMBER TANNEY: -- of the sample in
18 order to retest it.

19 So I have concerns about any regulation that
20 would directly turn over something that is possessed by
21 law enforcement if that -- especially because -- or the
22 agency at the request of law enforcement, because if it
23 was seized as evidence, it's really in the court's
24 possession.

25 COMMITTEE MEMBER SEDGWICK: I think there are a

1 number of ways that samples can be gotten to a defendant,
2 vary by about as many jurisdictions as we have in the
3 county -- in the state. There are a whole different.
4 Many times a letter coming in from a defense attorney is
5 sufficient to release it. But in some agencies it would
6 be required that the D.A. be notified of that, or
7 sometimes the D.A. sends the letter in or sends a signed
8 statement in. Some agencies -- or some jurisdictions
9 they're all done by court order. And it can certainly --
10 everything, in every jurisdiction a court order would
11 work.

12 COMMITTEE MEMBER TANNEY: Well, I have -- I think
13 I'm going to have to take a look at this, because, again,
14 if it's evidence seized -- and I don't know how their
15 jurisdictions did it -- but if evidence seized is
16 considered a possession of the court, then I would have a
17 real concern about any regulation that allows it to be
18 given over absent a court order. But I've got to look
19 into that. I don't know the answer --

20 COMMITTEE MEMBER LOUGH: In some -- there was
21 some language that had been submitted at one time. Oh, it
22 was probably San Diego's method, because in San Diego
23 our -- we worked mostly with the City Attorney's Office,
24 but normally everything went through them. Even though
25 you got a court order to release it. Well, what San Diego

1 is doing is just flat-out releasing it.

2 In San Bernardino what they did was that it
3 went -- these requests went to the D.A.'s office, who said
4 okay to split. We even had that just to -- on a side note
5 is we get court orders in San Diego to split drugs for
6 analysis by an independent lab and there's no requirement
7 to send it to a lab that has a DEA license. So the judges
8 don't always know. So we could be sending it to, you
9 know, other people and the court order says that.

10 So I think -- I don't remember -- maybe Clay
11 remembers -- probably not -- but there was some language
12 thing there that we wanted to specify how that kind of
13 took place. That's probably taken out, because of the
14 nature of this rewrite we probably weren't able to keep
15 anything in.

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 I recall that. But I think in this case,
18 existing current regulations prefer to the sample being
19 requested by the defendant. In the legal system I think
20 it's not -- it's reasonable that a request may be more
21 than somebody shouting from the sidewalk to the third
22 floor, "Give me my blood sample." So it could involve
23 some normal procedures. And a court order in some
24 jurisdictions may be the mechanism by which someone
25 requests that evidence. So I don't think that the current

1 language is really a problem.

2 CHAIRPERSON KIMSEY: Anything under the urine
3 collection, 1219.2?

4 I know there was some discussion or some interest
5 in, under "Breath collection," this continuous
6 observation. We have it now currently as "observation".

7 Do you remember what that discussion was, Patty?

8 COMMITTEE MEMBER LOUGH: Well, from my own
9 organization, there are some people that wanted to say
10 "continuous." And then the question is what does
11 "continuous" mean? Do you have to never take your eyes
12 off this person for 15 minutes, versus does continuous
13 mean they're in the back seat of your patrol car? And
14 those conversations go all around. So, you know, that
15 might be an agency problem.

16 With San Diego P.D. the officers are trained, "We
17 want you to write 15 minutes on your hand and we want you
18 to sit and watch this person for 15 minutes. We don't
19 want you to assume this means you can have someone else
20 watch him while you go get a coffee or something."

21 But it's -- you know, each lab kind of had their
22 own preference there. So we just said "under
23 observation." And the courts I think the first time this
24 comes up might establish a precedent on that.

25 CHAIRPERSON KIMSEY: And the difficulty with

1 "continuous" is because it was poorly defined before?

2 COMMITTEE MEMBER LOUGH: Well, yeah. What was
3 continuous?

4 CHAIRPERSON KIMSEY: Would it be helpful to
5 define "continuous"?

6 COMMITTEE MEMBER TANNEY: I think that, like
7 Patty says, that's a little micromanaging, and it's going
8 to be subject to cross-examination in the courtroom.

9 COMMITTEE MEMBER LOUGH: And that's sufficient
10 that's what we said and --

11 COMMITTEE MEMBER TANNEY: I think that's
12 sufficient.

13 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

14 I would disagree. I think if you read -- the
15 current question, "continuous" obviously is an issue for
16 the courts, and there's been a number of court cases. But
17 in each case the court indicates with specific statements
18 in their opinions that their purpose is to effectuate the
19 technical requirements of the agency's regulations, the
20 Department of Health Services regulations. So I think
21 it's -- I don't -- I think if you -- I think deleting
22 "continuous" is a pretty Draconian solution here. And if
23 you delete it, I don't see it's reasonable to expect that
24 a -- the courts are going to say, "Look, for the
25 scientific reasons associated with preventing certain

1 activities which could cause an elevated alcohol
2 concentration, we wish to instate 'continuous' and we'll
3 define it as follows:"

4 I don't think that's going to happen. And I
5 think the requirement for continuous observation is --
6 every -- virtually every state has something like that.
7 So I think this is the wrong solution.

8 And I would actually agree with the California
9 Association of Criminalists. They had some interesting --
10 their approach to that current conundrum that the courts
11 were dealing with was to define it more specifically. So
12 this is sort of a hundred eighty degrees from what -- I'm
13 encouraging Kenton to say something.

14 COMMITTEE MEMBER WONG: I agree with Clay.
15 Members of our association have thought about maintaining
16 the "continuousness" word. In general and in practical
17 terms, if you give officers an edge to cut corners, they
18 will and more. So I think we should maintain some
19 strictness in control of that.

20 COMMITTEE MEMBER LOUGH: I think some feedback I
21 have were things. If I was observing Laura and I was
22 maybe filling out my forms as I was observing her, but I'm
23 right here right next to her, you know, do I definitely
24 have to keep my eyes on her at all times? I mean if that
25 is the case, then it probably should be further defined.

1 Because otherwise people are going to sit and they're
2 going to be filling out their paperwork.

3 COMMITTEE MEMBER TANNEY: Actually they do now.
4 And I mean --

5 COMMITTEE MEMBER WONG: There is a court decision
6 with regard to that, that that was I believe approved and
7 that was considered kosher.

8 COMMITTEE MEMBER TANNEY: Right. So anything
9 that would attempt to make it impossible for officers to
10 do that type of thing would be a problem. Because, again,
11 the goal is to get them back out there on the street and
12 arresting more people who are violating the law, not have
13 them tied up watching people for 15 minutes with their
14 eyes on them and not being able to do anything else. So
15 that's my only concern.

16 If the word "continuous observation," if that's
17 how it already read -- I mean I don't know what the
18 practical effect is of -- who's going to determine whether
19 or not that there was continuous observation until you get
20 to the courtroom anyway? Before you certify a result, are
21 you going to say -- and, again, this is breath collection,
22 so I have an issue with this anyway. But are you going to
23 say, "Well, we're not going to certify the results of your
24 test because you were filling out a laboratory test" -- I
25 mean "you were filling out your police report at the same

1 time this person was in the back of your patrol car"?

2 So what's the practical effect of -- this is
3 something that's going to be litigated in the courtroom
4 anyway. I'm assuming if it comes out into evidence that
5 somebody took their eyes off of somebody, it's not going
6 to result in the evidence not being admitted. Or as a
7 scientist, are you not going to be able to form an opinion
8 based on the results of the test at all just because the
9 officer was filling out a police report?

10 COMMITTEE MEMBER WONG: No.

11 CHAIRPERSON KIMSEY: Well, it seems that the
12 observation is for the purpose of them ensuring that the
13 subject must not have ingested alcoholic beverages or
14 other fluids, regurgitated, vomited, eaten, burped,
15 belched, or smoked.

16 COMMITTEE MEMBER TANNEY: And that's all
17 specified.

18 CHAIRPERSON KIMSEY: Right.

19 COMMITTEE MEMBER TANNEY: And so this is more --
20 even a little more specific than it was before.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
22 You have language -- that's the current language.

23 COMMITTEE MEMBER TANNEY: They added burped and
24 belched.

25 CHAIRPERSON KIMSEY: At least that's what's

1 indicated. It's underlined: Proposed, adopted or amended
2 text.

3 COMMITTEE MEMBER WONG: Based on the court
4 decisions that we're aware of, I'm just saying that when
5 we train officers now, we tell them that, while the
6 "continuous" definition usually has to do with just
7 sitting there and staring at someone for 15 minutes, that
8 most people find that extremely intimidating; that they
9 can be within the presence of the individual and be
10 filling out paperwork and things like that. But at no
11 time should that ever allow them to leave the person's
12 presence; that if at any time they leave the person's
13 presence, even to just get up and say, "What was that,
14 Joe?" or if I -- that they have to re-begin -- restart
15 their 15-minute wait period. And if they have to be there
16 at the presence of the individual to be able to detect any
17 type of burping -- you know, belching, burping, anything
18 that might potentially cause interference with the test.

19 CHAIRPERSON KIMSEY: So you can delay this by
20 burping and belching --

21 COMMITTEE MEMBER TANNEY: See, and that's --

22 CHAIRPERSON KIMSEY: -- 14 minutes?

23 COMMITTEE MEMBER TANNEY: I see this as more of a
24 training issue than I do -- again to me this is regulating
25 the police officers out in the field, which I'm not sure

1 we should be doing in general.

2 I understand.

3 COMMITTEE MEMBER TANNEY: And I see this as more
4 of a training issue, that, yes, we're going to require
5 them to go through training to be certified, and the
6 training's going to include this. And then come to court,
7 you better be able to testify that you did these things.
8 Otherwise you're going to be compromising the evidence.

9 I don't see it as a --

10 COMMITTEE MEMBER WONG: -- regulatory change.

11 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

12 But if you eliminate the requirement for
13 continuous observation, I don't see any reason why it
14 would be included in training. If you delete the word
15 "continuous," in other words it's perfectly fine to
16 observe them for 5 minutes in the police car and wait 20
17 minutes, and 5 minutes at some other point, so...

18 COMMITTEE MEMBER TANNEY: I understand what
19 you're saying. I don't know that we regulate -- I don't
20 know that we have a regulation for every point that they
21 need to be trained on.

22 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

23 We have an existing regulation on this point.
24 I'm not talking about --

25 COMMITTEE MEMBER TANNEY: I'm not talking about

1 on this point. I'm saying you're not necessarily --
2 there's not a regulation here that says how the mouth
3 piece has to be placed in the mouth. There's not a
4 regulation on every thing that the officer has to be
5 trained to do in order to get a valid result. So I don't
6 know that that it's a regulation that's necessary as much
7 as it needs to be part of the training.

8 What's included in the training, I don't believe
9 is what is in the regulations necessarily.

10 COMMITTEE MEMBER WONG: I understand what you're
11 saying Laura, and I agree. I'm saying that. And I'm
12 saying I agree in that. Like when we train officers, we
13 say the 15-minute wait period has to be continuous, which
14 means you cannot sit there and watch them in your rearview
15 mirror while you're flying down the freeway to the jail at
16 65 miles an hour, because I'm going to come right behind
17 you and talk about divided attention and it's just going
18 to blow your credibility out of the water. So, you're
19 right, it is a training issue.

20 CHAIRPERSON KIMSEY: Has the presence of
21 "continuous" in the regulations posed a problem in courts?

22 COMMITTEE MEMBER LOUGH: Yeah, in some labs,
23 which is why, you know, I've been -- some labs say it's a
24 problem. Other labs say it's not a problem.

25 CHAIRPERSON KIMSEY: Item on page 23 talks about

1 duplicate samples -- two separate breath samples. And
2 there's some language about the units, .02 grams per 210
3 liters. That's obviously more of a technical term. And
4 this is --

5 COMMITTEE MEMBER TANNEY: It's the same as it was
6 before, only you just used the breath alcohol conversion
7 or the breath alcohol units, I should say.

8 COMMITTEE MEMBER LOUGH: But she says the volumes
9 will need to be provided.

10 COMMITTEE MEMBER TANNEY: You did. You wrote 210
11 liters.

12 COMMITTEE MEMBER LOUGH: No, but she's still --
13 or maybe she's just saying -- maybe that's just a comment.

14 CHAIRPERSON KIMSEY: Anything else on Article 5?

15 COMMITTEE MEMBER LOUGH: We left out all the
16 tissue collection information, which would be an autopsy.
17 Is it not in there now?

18 CHAIRPERSON KIMSEY: On page 24 we dropped
19 "immediately available" -- "immediately" from "available".

20 COMMITTEE MEMBER LOUGH: Before that, 1220, what
21 is now (a). No, she needs a strike license.

22 CHAIRPERSON KIMSEY: On page 25, 1220.1.3, "The
23 method shall be demonstrated to be free from interference
24 from anticoagulants and preservatives added to the
25 sample."

1 COMMITTEE MEMBER TANNEY: What page are you on?

2 CHAIRPERSON KIMSEY: Twenty-five, 1220.1.3: "The
3 method shall be demonstrated to be free from
4 interference..."

5 I guess we could come up with a definition for
6 "oxidizable substance" for No. 4 there just below.

7 COMMITTEE MEMBER SEDGWICK: I don't personally
8 know that it's really important to keep No. 4 in at all.
9 Because haven't you specified in standards of performance
10 for non-coroner samples that they have to identify by
11 qualitative method?

12 COMMITTEE MEMBER LOUGH: Does that sound like
13 something left over maybe from --

14 COMMITTEE MEMBER SEDGWICK: It was really
15 important in 1970 that this be in there, because most
16 laboratories were using oxidation methods. And in living
17 people non-alcohol oxidizables are quite uncommon, don't
18 react very well with it. But in dead people they're
19 all -- all bets are off. You can get anything in there.

20 At this point if we specify at any other point
21 that a qualitative test must identify ethanol, and we
22 think all laboratories are now using something that's more
23 specific, even the immunoassay tests are quite specific
24 for ethanol. Even if you have that, it should be
25 somewhere in there, that there is a qualitative test, and

1 we should treat it, living samples and postmortem samples
2 the same.

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 So it sounds like all bets aren't off.

5 This process is -- we said we are just doing
6 highlights. Some point in the future we're going to go
7 back.

8 So maybe we get to standard of performance. I
9 think we should -- I think the Committee should --
10 actually it would be this section. I think the Committee
11 should discuss the proposal. Proposals by the
12 Subcommittee has actually significantly increased the
13 specificity requirements of forensic alcohol methods.

14 There's actually three or four labs that still
15 use -- including a DOJ lab, still uses the Smith-Widmark
16 method. And it's, interestingly enough, not specific for
17 alcohol, but for ethyl alcohol.

18 Other alcohols and other volatile organic
19 solvents could produce a -- it would be volatile enough to
20 react with the dichromate and produce a measurable
21 response.

22 So the Committee is -- Subcommittee at least has
23 proposed changing that -- I think the effect of that would
24 be -- there would be several effects with that proposed
25 change. One would eliminate several labs who are

1 performing forensic alcohol analysis at least with that
2 method. I mean in some cases it's their only method.

3 I might add that as far as I know diffusion
4 oxidation methods have proven to be serviceable. And I
5 don't believe it's reported problems. Again, it's been
6 pointed out that all bets were on with regards to
7 antemortem samples. There shouldn't be a lot of
8 industrial solvents in a normal person's blood. So that
9 if they don't -- they don't produce, they don't -- the
10 diffusion oxidation method works just fine.

11 I think the proposed change here also drives a
12 number of other changes. A suggestion that we -- because
13 we're going to require methods to be specific, we
14 eliminate the requirement that other alcohols might be
15 used for disinfecting or cleaning the skin. As program
16 pointed out I think there's problems with that approach.

17 The most typical agent used for non-alcohol
18 analysis is rubbing alcohol, isopropyl alcohol. But in
19 fact there are some rubbing alcohol mixtures that actually
20 contain some ethanol. So I think the Committee would want
21 to consider carefully, just in general, would consider
22 whether they want the phlebotomist person collecting the
23 sample, who in some cases is not very technically
24 sophisticated, to make a determination it's okay to use
25 this alcohol and not that alcohol.

1 It's a suggestion -- or the program suggested, it
2 would be wiser simply to, as the current regulations do,
3 to prevent the use of any alcohol to clean the site prior
4 to the venipuncture. And that kind of change and it
5 changes in -- or retaining the existing language with
6 regards to cleaning sample containers and maintaining
7 equipment, but permit those labs which are using the
8 diffusion oxidation method to continue to use it.

9 COMMITTEE MEMBER TANNEY: That was a concern I
10 had when I first read it. I didn't know what different
11 types of analyses were being -- or methods were being used
12 throughout the state. And I think we need to be sure that
13 labs are not using diffused oxidation methods, if I got
14 that right.

15 CHAIRPERSON KIMSEY: Antiquated methods?

16 COMMITTEE MEMBER TANNEY: Whatever methods does
17 not distinguish rubbing alcohol from ethanol or other
18 types of alcohol.

19 CHAIRPERSON KIMSEY: Actually in Cathy's notes
20 here on page 26 at the top, the gray and the red, she
21 makes a comment about requesting assistance from the
22 medical examiner on the committee to assist with
23 appropriate language to address the amendment of the
24 subsection.

25 THE REPORTER: I'm sorry. I'm having a real hard

1 time hearing.

2 CHAIRPERSON KIMSEY: Oh, I'm sorry. I was just
3 reading at the top here on page 26 the gray and red
4 language where Cathy is requesting input from the medical
5 examiner to appropriate language to address the
6 subsection. But then also she adds "the question of
7 necessity to retain the subsection in regulation is also
8 open to debate."

9 Let me go on to 1220.2, Standards of Procedure.
10 1220.3 is Quality Control Program.

11 This starts talking about the quality control
12 samples -- reference samples that we talked about a bit
13 earlier.

14 COMMITTEE MEMBER LOUGH: And that is an area that
15 different laboratories do not agree, 1220.3(a)(2), the
16 gray area.

17 COMMITTEE MEMBER SEDGWICK: The one thing that it
18 does change but it does not address is leaving out the
19 rate of analysis to create this quality control reference
20 sample. Conceivably somebody could do a run of 16 on one
21 day and 1 on each of the other four days, which doesn't
22 really address the problem. And it would meet that
23 criteria.

24 COMMITTEE MEMBER LOUGH: Right.

25 COMMITTEE MEMBER SEDGWICK: But I don't know

1 whether that is necessary, whether it's really important.
2 The idea is to spread things over four days. It would be
3 more -- I can't imagine a laboratory would do that, but it
4 might be a good idea if you're going to change the number
5 that they -- the number they have to do. But how many
6 they're allowed to do in a day, that it would be
7 reasonable to change, they'd be done at least equal
8 amounts.

9 I don't know what the other Committee members
10 think. From a practical standpoint, it probably doesn't
11 make much difference.

12 CHAIRPERSON KIMSEY: Is there some language that
13 would clarify this more or is this --

14 COMMITTEE MEMBER LOUGH: I've kind of thrown in
15 with the latest, was from CACLD based on everybody's
16 disagreement, in hoping the other scientific people would
17 go ahead and put their input in as well.

18 CHAIRPERSON KIMSEY: Anything else on 1220.3?

19 COMMITTEE MEMBER TANNEY: I have a comment. And
20 this shows up somewhere else also. But when you say until
21 the error has been corrected, no blood, urine or tissue
22 samples shall be analyzed, period --

23 CHAIRPERSON KIMSEY: And where is that located?

24 COMMITTEE MEMBER TANNEY: Subdivision 6. It's on
25 my page 29. It's under the Quality Control Program, the

1 second page of that, at the bottom.

2 And there's somewhere else in here I think
3 relating to breath testing also, where there's an error
4 with a machine. No blood, urine or tissue sample -- or in
5 that case no breath sample should be analyzed. But it
6 doesn't specify using that machine. So at least in the
7 case of the breath test, I'm assuming that you can use the
8 other breast test machines, just not the one that's
9 defective. And that's the problem I have here, is if
10 you're -- and I don't understand all of the science here.
11 But if you're using a particular standard or you're using
12 a particular machine, and you have a problem with that
13 machine or that standard, then you don't want to say no
14 blood, urine or tissue sample shall be analyzed, period.
15 It's either using that machine or using that standard,
16 right?

17 CHAIRPERSON KIMSEY: Yeah, that's --

18 COMMITTEE MEMBER TANNEY: You can still -- and I
19 don't think that does go without saying, because it
20 doesn't ever say that.

21 CHAIRPERSON KIMSEY: No, no, I don't -- it really
22 doesn't go without saying. It's just it's sort of -- it's
23 good that you point it out. I think in the laboratory the
24 assumption would be what you're saying, what we're talking
25 about. But maybe it does need to be clearly delineated.

1 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

2 You know, the current regulations refer to the
3 method shall be considered in error. And the method is
4 designed as the steps -- at least the written method
5 description's defined as including the number of
6 components including the instrument used.

7 So under the old language -- I don't recall any
8 problem over this -- on the old language I think
9 considering the method's in error would be -- in Orange
10 County case would have three GC methods. They would only
11 need to consider that the one method that produced errant
12 results was in error and the others were okay.

13 COMMITTEE MEMBER TANNEY: Okay. So it may be
14 based on my lack of understanding as how the term
15 method --

16 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

17 Well, in this case we've made them more general
18 and we -- the Subcommittee suggested we change that to the
19 forensic alcohol analysis shall be considered in error.
20 So maybe that actually contributes to the problem.

21 COMMITTEE MEMBER TANNEY: Okay.

22 COMMITTEE MEMBER LOUGH: Well, because method --
23 you use the term interchanged with the instrument -- the
24 particular instrument method and instrument, when in fact
25 someone else might look at "method" as gas chromatography

1 rather than gas chromatograph No. 2.

2 COMMITTEE MEMBER TANNEY: Right. And I think
3 that's how I was thinking of method, a more general --

4 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

5 But I don't believe that forensic alcohol
6 analysis narrows that focus, the scope. Switching from
7 "method" to "forensic alcohol analysis," I don't think it
8 makes that better.

9 COMMITTEE MEMBER SEDGWICK: Actually what number
10 6 is really saying and probably should say is until such
11 time as the errors have been corrected, analyses using
12 that particular quality control reference sample are
13 considered invalid and additional analyses using that
14 particular reference sample will not be performed.

15 COMMITTEE MEMBER TANNEY: Right. That's what I'm
16 looking for.

17 COMMITTEE MEMBER SEDGWICK: It just doesn't say
18 it.

19 COMMITTEE MEMBER TANNEY: Right.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 Actually I would disagree with that. You're
22 suggesting that the focus there should be on the sample.
23 The assumption is the samples are prepared, and they're
24 standardized -- or the concentrations are determined over
25 a period of time such that you've got a good value and

1 they're -- at least under the Department's guidelines they
2 are -- their usage life is such and the storage is such
3 that the known concentration of the quality control
4 reference material is set and shouldn't be in doubt.

5 You've suggested that the problem may lie with
6 the sample. It's more likely the problem lies with some
7 other aspect of the method other than the sample.

8 COMMITTEE MEMBER SEDGWICK: Actually that's
9 correct.

10 COMMITTEE MEMBER TANNEY: Or it could be the --

11 COMMITTEE MEMBER SEDGWICK: It could be anything
12 else. And the QC, the quality control reference sample,
13 is just pointing out something's wrong. And until such
14 time as the error has been corrected, that particular QC
15 and whatever instrument it's on should not be used.

16 COMMITTEE MEMBER TANNEY: I'm thinking
17 instrument.

18 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

19 You know, again, if the lab has -- Orange
20 County's got -- it's three instruments. If they have one
21 QC for all three instruments, if you were to suggest you
22 could no longer use that QC until you figured out what the
23 problem was, I know you guys are quick and it would be
24 like that, but you would then shut down all three
25 instruments.

1 COMMITTEE MEMBER SEDGWICK: Each instrument has
2 its own quality control references sample --

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:
4 All right.

5 COMMITTEE MEMBER SEDGWICK: -- just to analyze on
6 that instrument.

7 COMMITTEE MEMBER LOUGH: That was not true in all
8 labs.

9 COMMITTEE MEMBER SEDGWICK: Correct.

10 COMMITTEE MEMBER LOUGH: There may be one bottle.

11 COMMITTEE MEMBER SEDGWICK: Well, there actually
12 is one bottle in Orange County. It's just that --

13 COMMITTEE MEMBER LOUGH: It's just yours is in --

14 COMMITTEE MEMBER SEDGWICK: There's actually one
15 sample made up. And using the procedure specified in the
16 regulation, 20 samples analyzed over five different days,
17 that's done for each individual instrument using the same
18 sample. And the results aren't always exactly the same.
19 They're very close. But what it does is it provides one
20 separate number --

21 COMMITTEE MEMBER LOUGH: Oh, I see.

22 COMMITTEE MEMBER SEDGWICK: -- a target value for
23 each instrument. That might be a function of the
24 instrument.

25 COMMITTEE MEMBER LOUGH: And that is not done

1 everywhere?

2 COMMITTEE MEMBER SEDGWICK: That's correct.

3 COMMITTEE MEMBER LOUGH: Yes.

4 COMMITTEE MEMBER SEDGWICK: So the bottom line is
5 that when in a quality control reference sample is out of
6 specifications, is unacceptable, you cannot use that
7 instrument with that QC sample until the error has been
8 determined and corrected.

9 COMMITTEE MEMBER TANNEY: That's an area of
10 concern we can work on.

11 CHAIRPERSON KIMSEY: Yeah. People can think
12 about some specific language changes that -- where we sit
13 down with Cathy about how this might be resolved.

14 1220.4, Expression of Blood, Urine, and Tissue
15 Alcohol Analysis Results.

16 COMMITTEE MEMBER TANNEY: With respect to
17 subdivision B, I know that this is the way that -- other
18 than the first phrase, this is the way that the current
19 regulations read. I understand that the science as far as
20 accuracy is to the second decimal place. But I can also
21 tell you that there's case law that allows us to get in
22 the third decimal place.

23 So, again, under the -- what we call the Truth in
24 Evidence Clause of the California Constitution, which lets
25 in any relevant evidence. And just because it comes in

1 doesn't mean it's not subject to being in dispute. But I
2 just wanted you to be aware of that. I don't think it
3 matters how this reads as to whether or not it's going to
4 be admissible or not.

5 CHAIRPERSON KIMSEY: And I guess the old G, now
6 the new F talks about tissue alcohol analysis. And that's
7 pretty much the standard weight amount of alcohol in a
8 unit, right?

9 COMMITTEE MEMBER SEDGWICK: Guess that's the
10 standard.

11 CHAIRPERSON KIMSEY: Okay. Anything else on
12 Article 6?

13 Page 30, Article 7.

14 COMMITTEE MEMBER SEDGWICK: I have a comment from
15 one of the analysts in the laboratory. And I'm -- I think
16 he's put a number down incorrectly here. It looks like
17 under 1221.1(b)(2), he says that this particular section's
18 been essential for preventing attorneys from asserting
19 that the requirements for blood alcohol analysis in
20 section 1220 apply to breath testing, which is incorrect.

21 Some similar statement he thinks should be
22 included to assure that this is clear in revised
23 regulations, especially if the requirements of 1219.3 are
24 going to stay there rather than be moved here.

25 COMMITTEE MEMBER TANNEY: Can you say that again.

1 COMMITTEE MEMBER SEDGWICK: It sounds like he is
2 suggesting that this No. 2 be put back in somewhere. In
3 other words to specify that the 1220.4, which, if I'm not
4 mistaken, breath. That's what it sounds like. But --

5 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

6 I initially had some concerns. I think you might
7 want to look at page 24. And there has been another
8 change under Article 6. It used to read Methods of
9 Forensic Alcohol Analysis, which now could be -- could
10 include breath. But it's been amended to say Methods of
11 Forensic Alcohol Analysis for Blood, Urine and Tissue. So
12 one might reasonably then conclude that all of Article 6,
13 especially since you've now broken out the reporting
14 results, all of Article 6 applies only to the analysis of
15 blood, urine and tissue, which used to be called forensic
16 alcohol analysis.

17 In Article 7, the Requirements for Breath Alcohol
18 Analysis, that distinction is sufficient such that you
19 wouldn't -- I had some concerns issued too -- you wouldn't
20 need a statement that says that the requirements of
21 Article 6 don't apply here since Article 6 is now titled
22 to fairly clearly indicate that they only refer to the
23 analysis of blood, urine and tissue.

24 COMMITTEE MEMBER SEDGWICK: Actually since we are
25 specifying and adding that in blood, urine, tissue alcohol

1 analysis results, that to my mind clarifies his concern,
2 because it's specified in --

3 COMMITTEE MEMBER TANNEY: I think that's what
4 Clay is saying, right, since we removed it and put under
5 Article 7.

6 COMMITTEE MEMBER SEDGWICK: Okay.

7 CHAIRPERSON KIMSEY: Well, Dennis informed me
8 that the gentleman has been able to call in.

9 Do we have someone on the line?

10 Maybe he gave up on us. I don't know.

11 Hi. This is Paul Kimsey in Richmond. Do we have
12 someone on the line?

13 We hear a faint noise. Can we increase the
14 volume?

15 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

16 I heard him say DHS is okay. I heard him.

17 CHAIRPERSON KIMSEY: I wonder why we're having
18 such difficulty.

19 COMMITTEE MEMBER TANNEY: I think maybe he's not
20 talking to us right now.

21 CHAIRPERSON KIMSEY: Hello. This is Paul Kimsey
22 in Richmond. Do we have someone on the line?

23 MR. DUNSTAN: This is Roger Dunstan. Who were
24 you asking for?

25 CHAIRPERSON KIMSEY: This is Paul Kimsey.

1 Were you going to be calling in to the Forensic
2 Alcohol Review Committee?

3 MR. DUNSTAN: Yeah, I did.

4 CHAIRPERSON KIMSEY: Great.

5 And could you sort of identify yourself and give
6 us your background and the information you want to
7 present.

8 MR. DUNSTAN: Certainly. My name Roger Dunstan.
9 I'm a principal from the Senate Health Committee. And
10 Senate Health Committee is just the committee I guess
11 where most of the thrust of version of 1623 was worked
12 out. Although certainly the bills after that. And really
13 I'm here to the extent that is necessary for you all as
14 the resource. I'm just trying to provide any help or
15 explanation that you may need. I mean the bill's fairly
16 straightforward. But if there are any questions that you
17 have, I'd be happy to answer them.

18 CHAIRPERSON KIMSEY: Great. Well, thank you very
19 much for calling in. We have you on a teleconference here
20 in an auditorium. We have the full Committee that was
21 Mandated by 1623 -- well, actually it's not the full
22 Committee. But we have those that could participate
23 today. And it's also being recorded both by a
24 stenographer and audio recording.

25 And, again, thank you very much for calling in.

1 We had some discussions this morning about the legislation
2 and the intent. One question that we had was the -- sort
3 of the role of the Department seems to be fairly clearly
4 left in the statute with regards to enforcement of the
5 regulations. That was I think 100725.

6 MR. DUNSTAN: 100725. Let me take a look at
7 that.

8 Are you still there?

9 CHAIRPERSON KIMSEY: Yes, we're here.

10 MR. DUNSTAN: I'm sorry it was still recording.

11 CHAIRPERSON KIMSEY: Yeah. No, we were concerned
12 too.

13 MR. DUNSTAN: Yes, honestly I think I have --
14 and, again, I'm going back to what my recollection was.

15 CHAIRPERSON KIMSEY: Excuse me, sir. Our
16 stenographer was wondering if you could talk a little
17 louder.

18 MR. DUNSTAN: Yes, yes, I will certainly try and
19 do that.

20 Would you do me a favor and repeat your question
21 or what you thought the understanding was, when you said
22 just before we had the --

23 CHAIRPERSON KIMSEY: Just that It seems fairly
24 clear in the statute about the Department's role in 100725
25 that the Department was responsible for enforcing these

1 regulations.

2 MR. DUNSTAN: Well, I'm going to look that up.
3 Because quite obviously I think it was the Legislature
4 stopped doing what they did is the relevant section is to
5 put -- the Department's putting more in line with areas of
6 public and environmental health as they're promulgating
7 the regulations. But the actual implementation is left to
8 the local agencies. You know, with the revocation of a
9 license authority, putting the burden on the lab to follow
10 certain standards. I see that this is still code. But
11 I'm surprised that it would be like -- look surprised
12 that -- surprised it would even be a priority of the
13 Department. And then that perhaps my own personal
14 reading. But I'm just surprised by that.

15 CHAIRPERSON KIMSEY: Yeah. No, that's fine. I
16 think there was some feeling that basically the intent of
17 legislation was not to have the Department that involved
18 with the enforcement. But that from the Department's
19 perspective it's fairly clear that we do have
20 responsibility about enforcement of the Title 17
21 regulations. And obviously sometimes we don't have really
22 discretion on, you know, what we want to be enforcing or
23 not.

24 By the way, I'm Paul Kimsey. I'm the
25 Department's representative. We do have other folks here

1 that can also speak to the issue.

2 MR. DUNSTAN: Okay, okay. Yeah, I don't know
3 what else to add to that in terms of -- yeah, it is clear
4 you have responsibility. I just wondered as a practical
5 matter, you know, given the intent of the -- and framing
6 of the law that is to reduce significantly the
7 Department's authority, I'm just wondering what you would
8 do to enforce the regulations.

9 CHAIRPERSON KIMSEY: Well, it's quite clear that
10 legislation did remove the licensing function and the
11 on-site function and the committee itself. I mean the
12 Department is one entity here. But the Department itself
13 is also figuring out -- trying to figure out how would we
14 enforce these regulations, seeing as we don't -- we're not
15 licensing, we're not inspecting.

16 MR. DUNSTAN: Yeah. I mean it seems to me that
17 for some reason something came to the Department's
18 attention they would clearly have the authority to deal
19 with it. And that made some sense to have left that in
20 because of that possible circumstance.

21 But I think -- if I get what you're saying
22 correctly, I think what I'm saying is that it's clear that
23 the Department's -- what they would have done with this
24 section, you know, four years ago, let's say, is radically
25 different than they would do with this section today.

1 CHAIRPERSON KIMSEY: I'm not sure that's
2 reflected in the language, but -- I mean I appreciate what
3 you're saying.

4 Are there comments from the Committee.

5 COMMITTEE MEMBER TANNEY: This is Laura Tanney
6 from the San Diego District Attorney's Office.

7 I'm just wondering then who you envision would
8 enforce regulations? Regulations are generally enforced
9 by some regulatory body or administrative body. And if
10 the intent was not to have the 100725 there, although it
11 does exist and we're compelled to follow that now since
12 it's still on the books, but if the intent was not to have
13 that there, who did you envision would enforce the
14 regulations?

15 MR. DUNSTAN: Well -- and I don't want to say
16 that the intent was to remove that section, because that
17 would be -- for me to be comfortable saying the intent,
18 there would have to have been, you know, some legislative
19 action or discussion on that. And there was none to my
20 recollection.

21 I think that the Legislature was moved by the
22 argument that DHS's overview or oversight and purview
23 needed to be reduced, that this was just not a priority
24 activity. I don't know that they actually, you know, came
25 up with the conclusion of, okay, who should enforce the

1 regulations and how accurately they should enforce it. I
2 think their answer to that question is probably just
3 spoken to by what they did do, i.e., severely cut back the
4 DHS's role.

5 Does that make sense what I'm saying?

6 COMMITTEE MEMBER TANNEY: Right. I guess that
7 leaves us in a difficult position of having the Department
8 have the authority, but not the tools to do it.

9 MR. DUNSTAN: Yes. I hear what you're saying.

10 CHAIRPERSON KIMSEY: And unfortunately -- excuse
11 me. I'm Sorry to interrupt, and this is certainly not an
12 opportune time. But we have to change one of our
13 technologies here. We have to -- we're audio recording
14 the proceedings and we need to change the CD. So we have
15 to take a break for about three minutes. But please stay
16 on the line.

17 MR. DUNSTAN: Sure.

18 (Thereupon a recess was taken.)

19 CHAIRPERSON KIMSEY: Okay. I've been given the
20 high sign. I think our CD has been changed out.

21 The stenographer had a question for the gentleman
22 on line. If you could spell your name please.

23 MR. DUNSTAN: Sure. It's Roger, R-o-g-e-r,
24 Dunstan, D-u-n-s-t-a-n.

25 CHAIRPERSON KIMSEY: Thank you very much.

1 MR. DUNSTAN: Of course.

2 If I could add something. I appreciate some of
3 the ambiguity of that. And I suppose in the future if
4 something went wrong, there would be a tendency to look to
5 the Department who has the authority to enforce the
6 regulations.

7 On a practical matter, probably a little less
8 concerned about the ambiguity, as I think a question of
9 resources and priority. I think clearly the Legislature
10 and Governor have kind of said where they think the
11 priorities should be.

12 Also, I should add that we're certainly cognizant
13 of the accreditation, which is not a complete substitute
14 for regulatory authority, but still it is somewhat of a
15 substitute for that.

16 CHAIRPERSON KIMSEY: Also was it the intent of
17 legislation to regulate breath alcohol analysis? That was
18 a question we had this morning.

19 MR. DUNSTAN: Help me with the question a little
20 bit.

21 CHAIRPERSON KIMSEY: Well, I think --

22 MR. DUNSTAN: I mean I'm sure it's clear to you.
23 But I don't work on this regularly. I mean I'm just
24 looking at 100701, where it seems to me it relies on the
25 laboratories to self-regulate there. There's another

1 section that conflicts or it's somewhat ambiguous. If you
2 could draw it to my attention, that would help me.

3 CHAIRPERSON KIMSEY: I think, Laura, you had the
4 question this morning?

5 COMMITTEE MEMBER TANNEY: Well, my concern was a
6 little broader than that. And that is, that my
7 understanding is it's the intent to -- the intent of the
8 legislation was to leave basically the competency and
9 proficiency testing and oversight of laboratories up to
10 the laboratory associations or -- what -- do you call them
11 an association, Patty?

12 COMMITTEE MEMBER LOUGH: Well, it's just
13 basically the labs themselves. But a majority are
14 accredited through the organizations.

15 COMMITTEE MEMBER TANNEY: Okay. So through the
16 accreditation process and those organizations.

17 And you left in the legislation part about
18 Department shall enforce the regulations adopted by the
19 Department. And my concern is that if we're writing
20 regulations, and it sounds like there's really nobody to
21 enforce them, then why are we writing regulations rather
22 than recommendations? That's the first concern.

23 The second one is that it seems that the
24 laboratory -- that the intent in the regulations in Title
25 17 is to regulate laboratories and not law enforcement

1 agencies. And now that much breath testing is done out in
2 the field by law enforcement officers using breath alcohol
3 machines, is it your intent to regulate those law
4 enforcement officers? And I don't see any authority for
5 that.

6 And so by drafting regulations that regulate
7 breath alcohol analysis, are you thereby trying to
8 regulate law enforcement officers which you have no
9 authority to regulate? I guess that's it.

10 MR. DUNSTAN: Okay. That's helpful.

11 And certainly I look back at the analyses, my
12 recollection of the discussion that occurred on this
13 bill -- the multiple discussions that occurred on this
14 bill. There was no discussion of that issue. In other
15 words there was not -- the Legislature did not have an
16 intent to try and regulate officers in the field. I don't
17 even remember that question coming up, quite honestly.

18 Others who may have been involved in those
19 discussions may -- they may have a different recollection,
20 but that's certainly -- I don't have one.

21 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

22 If I could add to that question. This is Clay
23 Larson. I'm with the Department of Health Services.

24 There was an existing Section 100715, the
25 regulations that says the testing of breath samples by law

1 enforcement agencies for the purpose of determining the
2 concentration of ethyl alcohol in the blood of persons
3 involved in traffic accidents or traffic violations shall
4 be performed in accordance with regulations adopted by the
5 Department.

6 I think there was a previous section that says
7 that the Department can dictate how breath alcohol
8 analysis is performed.

9 That section and another section which gave the
10 Department similar authority to regulate laboratories got
11 combined into a new section that refers to laboratories
12 engaged -- the word "engaged", it's a new word that
13 probably wouldn't pass muster for our OAL requirements --
14 but engage in the performance of testing -- and then it
15 lists the different kinds of samples. And it includes the
16 testing of breath samples by law enforcement.

17 So the question is: In striking 100715, which
18 gave the Department specific authority to regulate breath
19 testing done by law enforcement, and replacing it with a
20 requirement referring to laboratories being engaged, was
21 the intent to reduce the regulation of breath alcohol
22 analysis?

23 MR. DUNSTAN: I think my previous answer -- I'm
24 not trying to be difficult, but I think I don't have it in
25 me -- to my previous answer. I don't think -- and let me

1 add a concept of this. Everything, you know -- we were
2 one committee, although certainly a committee where a lot
3 of the amendments occurred. There certainly were other
4 people involved in the bill and the legislative process.
5 So I don't want to take, you know, credit or -- to be the
6 source of all information on it certainly. I really can't
7 answer that question.

8 If I may add, I think what you're pointing to and
9 others, if there's -- for bill, well, I'm sure the
10 Legislature would entertain it. The Department I think
11 has raised some good issues, a couple years after the
12 fact, nevertheless good issues, so I think there's maybe
13 something that needs to be done.

14 CHAIRPERSON KIMSEY: One of the other topics that
15 came up this morning as we were looking at the issue of
16 the Department's responsibility for enforcement -- and
17 it's quite clear that the legislation removed the
18 licensing function and the on-site inspection function --
19 enforcement generally leads to some sort of regulatory
20 responsibility to remove something or, you know -- and we
21 weren't sure, you know, if you're not licensed, then what
22 do you have invested that an enforcement action could be
23 taken against.

24 So that if there's any clarification you might be
25 able to verify there.

1 The other issue was the Department's not
2 licensing, which is quite clear we're not, we will not
3 know who's doing the work in the state. So there was some
4 discussion about registering laboratories. But the more
5 we talked about that, the more we I think collectively
6 felt that it sounds like licensing again. But at some
7 point we did think registration so at least we know who
8 the universe of organizations and companies doing this
9 work is, just so that they can be informed, if nothing
10 else, of the work of this Committee, did seem to be a
11 worthwhile area to consider.

12 MR. DUNSTAN: I think there is ample precedence
13 for doing something like that without venturing into the
14 licensing issue, you know, some sort of notification of:
15 I'm engaged in this practice, so Department of Health
16 Services, you know, please send me what you think is
17 appropriate.

18 CHAIRPERSON KIMSEY: Okay. That's helpful.

19 Other questions for Roger that came up this
20 morning or...

21 I don't hear other -- I don't see any other
22 questions.

23 MR. DUNSTAN: Okay. Well, wish I could have
24 answered more of your questions. You certainly are
25 correct, there are some dilemmas there.

1 CHAIRPERSON KIMSEY: That's fine. And we greatly
2 appreciate your calling in. And we may contact you in the
3 future.

4 MR. DUNSTAN: Oh, it was my pleasure, and do not
5 hesitate.

6 CHAIRPERSON KIMSEY: Thank you.

7 MR. DUNSTAN: Okay. Bye-bye.

8 CHAIRPERSON KIMSEY: Okay. Do we have anyone
9 else on the line?

10 Okay. Well, that was -- I think that was
11 helpful. Maybe we ought to sort of take up -- sort of
12 reopen that topic a little bit. We've got about a half
13 hour left here.

14 Do we want to -- well, how do we want -- do we
15 want to continue the discussion we had this morning based
16 on the idea of possibly registering or have some sort of
17 notification to the Department that an entity is doing
18 this type of work in the state? That's something
19 obviously at our future meetings when we -- when Cathy or
20 someone like herself is present to help us with the
21 language, but that's something that we could certainly
22 direct her to work on prior to our next meeting.

23 That certainly doesn't deal with the enforcement
24 issues so much, but at least the Department would know
25 who's currently engaged in those practices in the state.

1 Any more feelings based on Roger's comments about
2 the enforcement issue?

3 COMMITTEE MEMBER LYLE: Yeah, he seemed to think
4 that it wasn't a big deal to not have a licensing ability,
5 but to be able to enforce. And it sounded like it was --
6 like their intention was, not really haphazard, but just
7 sort of by happenstance, if you got notified somehow, then
8 you could wag your finger.

9 COMMITTEE MEMBER TANNEY: It seems like it's
10 giving you the authority to bark but not really bite.

11 CHAIRPERSON KIMSEY: Right, which is an
12 interesting -- and I appreciate the analogy. And
13 obviously in all of our jobs we have workloads, and it
14 would appear sometimes that we're enforcing things in
15 certain areas more than others. I don't know that that's
16 something we can put in regulation.

17 COMMITTEE MEMBER TANNEY: Well, and I think his
18 point that ASCLD or whatever organization is going to
19 provide the -- really the ultimate enforcements in terms
20 of being able to withdraw the accreditation and not, and
21 self-enforce, I mean that's kind of what they wanted to do
22 in the first place, it sounds like. And that's why I'm
23 not really sure whether these regulations in reality
24 become recommendations or guidelines, like you said at the
25 beginning, internal guidelines for them to use when you

1 don't have any ability to enforce them or mechanism for
2 enforcement. Although authorities, but no mechanism, it
3 sounds to me like, you know, you're saying this is the way
4 it will be, we can't do anything about it. If the case
5 goes to court, then maybe the court can do something about
6 it. Or the defense attorney when he's cross-examining
7 somebody, and then it's ultimately up to the lab to -- lab
8 organization to determine whether they're going to give
9 you accreditation.

10 I don't know -- I still think the registration is
11 something that should be looked into. I think you
12 should -- since you do have the responsibility, you should
13 at least have some mechanism of knowing what's out there
14 so you can, as Bruce said, wag your finger when you need
15 to.

16 (Laughter.)

17 CHAIRPERSON KIMSEY: Maybe since we haven't had
18 one yet, maybe we ought to take a vote on the idea the
19 Department should draft language about registration.

20 COMMITTEE MEMBER TANNEY: Well, I don't think --
21 I think that we should look into whether that's feasible
22 before we take a formal vote on it. I think we should
23 consult with Cathy or have her look at it. And --

24 CHAIRPERSON KIMSEY: Maybe prepare some draft
25 language or something?

1 COMMITTEE MEMBER TANNEY: Sure.

2 COMMITTEE MEMBER LYLE: Yeah, the only options
3 that I see are some cleanup legislation. I mean that's
4 one. And then, number two, is to just sort of minimize
5 the role and give you the barking ability. And then the
6 third option, just off the top of my head, is maybe in
7 conjunction with a licensing body that tells you, "Could
8 you bark at these people because they're out of
9 compliance," and then you bark, and then you tell them,
10 "They're going to take away your license."

11 The accreditation?

12 CHAIRPERSON KIMSEY: Yeah, the accreditation.

13 COMMITTEE MEMBER LYLE: Yeah, or accreditation.

14 COMMITTEE MEMBER LOUGH: I think that another
15 thing to keep in mind is the majority of labs performing
16 this work for law enforcement, because that's who this
17 applies to, are all going to be, for the most part, public
18 laboratories that are going to be easy to find. It does
19 not apply to anyone else who's hung a shingle out and
20 says, "I'm doing this." You know, so someone else who
21 could be doing independent work, not for the law
22 enforcement agency, none of these regulations even apply.
23 So we're talking like it's going to be all over the place
24 when we do this. And yet, you know, we very easily will
25 only find the laboratories doing this work.

1 COMMITTEE MEMBER SEDGWICK: And it also applies
2 to private laboratories under contract to public agencies.

3 COMMITTEE MEMBER LOUGH: Right, doing law
4 enforcement work.

5 COMMITTEE MEMBER SEDGWICK: Doing prosecution
6 work.

7 CHAIRPERSON KIMSEY: On both sides of the aisle?
8 In other words --

9 COMMITTEE MEMBER LOUGH: No, for the prosecution.

10 CHAIRPERSON KIMSEY: Just for the prosecution?

11 COMMITTEE MEMBER LOUGH: Just for law
12 enforcement. The private laboratories doing defense work
13 do not have to comply with any of these regulations,
14 currently or with the changing regulations.

15 CHAIRPERSON KIMSEY: And I think between now and
16 our next meeting I think -- some of this I think we need
17 to put in regulation. Obviously if we decide to go down
18 the road of registration, that's fine. I think the
19 Department would appreciate some guidance on the
20 enforcement aspects because, barring some clarification,
21 whether, you know, finger pointing or wagging or barking
22 or whatever, then it looks like that's a fairly direct
23 responsibility. And some regulatory language that helps
24 clarify that for the Department, I think, would certainly
25 be helpful.

1 COMMITTEE MEMBER LOUGH: You know, on one hand I
2 thought -- you know, one thing that was an advantage was
3 that you would know who to send advisories out too. But
4 at the same time you do have representatives with anyone
5 that should be concerned in those areas by the members of
6 this panel, you know, should some issue come up. You
7 know, those were carefully selected from the different
8 disciplines to get that information out. So I'm not
9 sure -- I'm not sure it's necessary.

10 CHAIRPERSON KIMSEY: So the communication would
11 then be through this representation on this Committee?

12 COMMITTEE MEMBER LOUGH: Well, such as
13 prosecuting attorneys would be CDAA if something -- if the
14 Department were to find out that some lab was doing
15 something really wrong and didn't seem to be according to
16 this, they would contact everyone on here. So the D.A. --
17 CDAA would get the information on it. And if it was in
18 San Diego, you would say, "Oh, it's our lab in San Diego."

19 Each of these organizations that we represent
20 that are on here are common organizations that most people
21 belong to that do that kind of work. And they would know
22 other people in turn and similar organizations that could
23 get that information spread out.

24 CHAIRPERSON KIMSEY: Okay. Other comments, ideas
25 based on our conversation with Roger?

1 Why don't we spend our last minute time here
2 trying to get a good schedule for our future meetings.

3 I think it would be important to have, you know,
4 Cathy Ruebusch or someone from that office participating
5 with us. And I'll work to ensure that.

6 I think -- we've had some informal discussions
7 about trying to meet more frequently and maybe do that by
8 videoconference between northern and southern California.
9 I'll certainly try and look into a site in San Diego that
10 could be a conference being with either Richmond here or
11 Sacramento. This is sort of the end of March here.

12 What's the feeling of the group of both on when
13 we would meet next and then also the frequency?

14 Two months, every month?

15 COMMITTEE MEMBER TANNEY: I think we need at
16 least for me -- between this meeting and the next meeting
17 I think -- I would think with the ten-day requirement of
18 getting everything on the agenda, time for people to go
19 through this, submit proposed language that addresses some
20 of these concerns and then give us time to review it, I
21 think we're looking at six weeks -- six to eight weeks at
22 least for the next meeting. I think there's some
23 significant concerns that have to be worked on before the
24 next meeting, including with Cathy, maybe working on some
25 of the registration questions. I don't know what other

1 people feel about that.

2 COMMITTEE MEMBER LYLE: Yeah, I was thinking two
3 months would be about right between meetings.

4 CHAIRPERSON KIMSEY: It's helpful, and maybe for
5 all of us, that if we sort of decide that we're going to
6 meet every two months, that we sort of pick a day of the
7 week that's good and general time frames. That way I know
8 it helps me get my calendar. I can put a hold on it and I
9 don't get -- well, it makes it easier.

10 This is a Monday, which normally is not a good
11 day. But what's -- Tuesdays are bad days of the week for
12 me generally. I'm in Sacramento with meetings all day.

13 Wednesdays, Thursdays?

14 COMMITTEE MEMBER LYLE: Thursdays are better for
15 me.

16 COMMITTEE MEMBER SEDGWICK: Thursdays are better
17 for me.

18 CHAIRPERSON KIMSEY: Thursdays are okay?

19 COMMITTEE MEMBER WONG: Doesn't matter.

20 CHAIRPERSON KIMSEY: So Thursdays. Okay.

21 And also we might want to think about the
22 duration. I mean how many hours do we think is a good
23 amount of time to dedicate to this in a day? Three hours?

24 COMMITTEE MEMBER TANNEY: It depends on, again,
25 the traveling. It's a very long day for people coming up

1 from Orange County or San Diego to fly up here in the
2 morning. I know for me, I won't get back to my home till
3 after 8 o'clock tonight. So that's going to 3 o'clock
4 this afternoon.

5 So I'm fine with going to 3. But I wouldn't want
6 to go any later if we're traveling up here.

7 CHAIRPERSON KIMSEY: If the videoconferencing is
8 successful?

9 COMMITTEE MEMBER TANNEY: Then I could go till 5.

10 COMMITTEE MEMBER LYLE: Yeah.

11 CHAIRPERSON KIMSEY: Okay. We could still go
12 with a full day -- I mean technically a full day?

13 And so if people have their calendars, what is
14 the --

15 COMMITTEE MEMBER LOUGH: Tentatively --

16 CHAIRPERSON KIMSEY: -- the last Thursday in May,
17 what is that?

18 COMMITTEE MEMBER LOUGH: Twenty-fifth. Last
19 Thursday in May is the 25th.

20 CHAIRPERSON KIMSEY: Is the 25th. Okay.

21 So tentatively May 25th. And again maybe go from
22 10 to 3.

23 Then again in July? What's sort of the last
24 Thursday in July?

25 COMMITTEE MEMBER LOUGH: Twenty-seventh.

1 CHAIRPERSON KIMSEY: Twenty-seventh.

2 Why don't we go ahead and look at the last
3 Thursday of September just to --

4 COMMITTEE MEMBER LOUGH: Twenty-eighth.

5 CHAIRPERSON KIMSEY: Twenty-eighth.

6 Other things that we think would help us with our
7 work, besides having Cathy present?

8 I have not asked for a legal -- written legal
9 interpretation of the bill. I don't know that would be
10 helpful or we feel that we have a good feeling for that
11 now. There's a potential conflict there in a sense that
12 the attorney that would be writing it up would be a
13 Department attorney. I don't know, I thought in the last
14 few months that having something in writing, a
15 clarification on the interpretation of the bill might have
16 been helpful, because we -- those of us on the science
17 side or the lay side of this have had discussions on
18 exactly what the bill intended. It's not so much what the
19 bill intended, but what the bill really directs to have
20 happen. I mean there's always the good intentions and all
21 kinds of intentions.

22 But if you think that would be helpful to have a
23 legal -- a written legal opinion about the impact of the
24 bill on the Department, I can certainly request that.

25 COMMITTEE MEMBER TANNEY: When you say the

1 Department would do it, why would it be the Department
2 rather than the Attorney General's office?

3 CHAIRPERSON KIMSEY: That's a good point. I
4 hadn't -- we could certainly make that request. That sort
5 of makes it a little bit more neutral.

6 COMMITTEE MEMBER TANNEY: I mean I'm not
7 necessarily saying it's necessary. I don't know what the
8 feelings of the rest of the Committee are. I feel that we
9 kind of have a good understanding of what it says and what
10 we're confined to by it, like it or not. I don't know.

11 Do other people think it would be helpful to have
12 an opinion on what it says?

13 COMMITTEE MEMBER SEDGWICK: It certainly couldn't
14 hurt.

15 CHAIRPERSON KIMSEY: Okay. At some point here we
16 need to also let the public comment.

17 Any more comments from the public on this
18 afternoon's --

19 MS. WEINGARTEN: I had -- I'm making notes, and
20 we have several comments actually. One going back to the
21 continuous observation. I think it's particularly
22 important, and I happen to subscribe to that. If you
23 eliminate that, I think you can probably consider it the
24 Defense Attorney's Retirement Act, because that is a big
25 point of contention.

1 I don't think that most attorneys that I've
2 worked with interpret that unrealistically. They don't
3 expect the officer to stand and stare. However, if the
4 officer goes and has donuts or coffee with his colleagues,
5 that's not continuous observation. And I think that's
6 obviously not fulfilling what he's supposed to be doing.

7 I think it needs to be specified, particularly
8 now that many of the breath testing devices that are being
9 used are fuel cell devices, which do not have slope
10 detectors, makes it even more important to have that
11 observation period.

12 Second point has to do with tissue -- I noticed
13 the tissue reporting units, which actually are probably in
14 conflict with the way most laboratories report vitreous
15 fluid. The tissue reporting is in terms of weight of
16 alcohol per weight of tissue. Vitreous I think is usually
17 reported as per weight -- or, I'm sorry, per volume. So I
18 think you need to take that into consideration.

19 In terms of certification boards. Not every
20 laboratory that's doing this work is ASCLD certified.
21 Coroners, laboratories that do solely coroner's work are
22 not for the most part ASCLD certified. I'm talking to Dr.
23 Lemos from San Francisco. Their laboratory is working on
24 an ABFT certification for this. Many coroner's labs don't
25 qualify for ASCLD certification, nor do they wish to have

1 it.

2 Private laboratories. To the best of my
3 knowledge, there's only one private laboratory that is
4 ASCLD certified. I think you're underestimating the
5 amount of work. I hear people saying, "Well, they're
6 doing very little." That's not true. I know of one
7 laboratory that is servicing many, many, many counties in
8 law enforcement agencies in this state. Private labs are
9 doing tens and tens and tens of thousands of samples a
10 year. You need to consider the fact that they are not
11 interested in ASCLD certification, nor would they qualify.
12 But they're going to look elsewhere for their
13 certification. So I think we may be overestimating the
14 importance of ASCLD in the overall scheme of things.

15 One thought that I had when you were talking
16 about barks and bites, is that it may be possible for the
17 Department to -- if, for instance, something comes to your
18 attention, you see a lack of compliance with the
19 regulations, you may be able to issue a reprimand. Simply
20 a letter going to that agency. And this isn't something
21 new actually. This goes back to when even -- you know,
22 old times when laboratories were not complying. They
23 would get a letter saying, "Shame on you. You're not
24 doing this right" or "you're doing something wrong." And
25 then if attorneys do discovery, you know, any and all

1 records relating to your blah, blah, blah, there is that
2 reprimand sitting right there.

3 Counting on the courts to enforce this I think is
4 futile. Most courts don't want to be bothered. Even in
5 terms of -- you were talking about a split to referees. I
6 happen to know in Santa Clara County even the D.A.'s
7 office a long, long, long time ago gave up processing
8 those letters because the letters requesting splits would
9 get lost in somebody's basket and it never happened. So
10 what eventually happened was the letter goes directly to
11 the laboratory, the laboratory splits the sample and sends
12 it where it needs to go. It doesn't require a court
13 order. I really don't think the courts -- they're so
14 overburdened, they do not want to be bothered with extra
15 stuff.

16 And this would be putting a lot of extra stuff
17 back into the court's bailiwick. And that doesn't --
18 also, with all due respect, they frequently make decisions
19 that are ill informed from a scientific basis.

20 In terms of notifying. I've been expecting every
21 laboratory that's doing forensic alcohol to receive their
22 notification through a committee member -- organization
23 represented by a committee member is totally unrealistic,
24 because I happen to know some laboratories which never,
25 never bothered to go to meetings of any groups represented

1 on this Board. And they're doing perfectly good work, but
2 they would be left off because they happen to belong to
3 other professional organizations that they think are
4 really more on point than any of these groups. And
5 that's -- you know, that's their opinion. That's what
6 they do. I just happen to know that they're out there.

7 So I think you really do need probably to
8 maintain some sort of list of organizations or interested
9 parties. And maybe just have people sign up as "I'm an
10 interested party. Please notify me."

11 But I think to count on information from the
12 Committee members is not going to be adequate.

13 Thank you.

14 CHAIRPERSON KIMSEY: Any other comments?

15 MR. STATEN: I just have one. I'm Keith Staten
16 from the Department of Motor Vehicles. And we do a lot of
17 administrative per se hearings.

18 And I'm just -- and I'm trying to reconcile that
19 if in fact DHS does not vouch for the qualifications and
20 the testing procedures, do we now have a problem in that
21 we're going to have to call in lab personnel or the
22 officers and we can't rely on any public records exception
23 to the hearsay rule or their documents anymore or
24 declarations anymore? That's just my concern. I'm just
25 trying to reconcile that.

1 I agree about the continuous language. We get
2 hit on that all the time constantly. I think it's
3 Manriquez, that's the case, something like that. But
4 there's a couple of them on that. And the biggest problem
5 with the continuous is that it's the -- you don't have to
6 look at the person, but as long as you're there to hear.
7 So you can hear a burp, you can hear a regurgitation,
8 something like that. Now, that becomes a problem too,
9 because the person testifies, "Well, I silently burped."
10 But I think courts are going to lean to as long as the cop
11 is in the area and has an opportunity to see the person.

12 But my problem would be just trying to get stuff
13 into evidence at our hearings now if in fact they're not
14 certifying the labs or registering or licensing them or
15 anything like that. And I don't know what that impact is
16 going to be on the shift.

17 CHAIRPERSON KIMSEY: Thank you.

18 Other comments?

19 Yes.

20 COMMITTEE MEMBER LOUGH: Before we adjourn I'd
21 like to get back to that issue of proficiency testing.

22 CHAIRPERSON KIMSEY: Yes.

23 COMMITTEE MEMBER LOUGH: And whether or not those
24 using ASCLD-LAB approved vendors can use that in place of
25 the DHS proficiency testing.

1 CHAIRPERSON KIMSEY: Right. And I think -- my
2 memory, what I was involved till this letter that went out
3 in November, I think that we had from our legal office,
4 that pretty much said no to that.

5 But, Mary, you had some conversations with Patty
6 since then?

7 FOOD AND DRUG LABORATORY BRANCH CHIEF SOLIMAN: I
8 spoke with legal three or four weeks ago. They said
9 basically that we continue doing what we're doing.

10 CHAIRPERSON KIMSEY: Okay. So nothing has really
11 changed since the November letter?

12 FOOD AND DRUG LABORATORY BRANCH CHIEF SOLIMAN:
13 No.

14 COMMITTEE MEMBER LOUGH: Since our conversation
15 that we had?

16 FOOD AND DRUG LABORATORY BRANCH CHIEF SOLIMAN:
17 Legal told us that we can continue doing what
18 we're doing.

19 COMMITTEE MEMBER LOUGH: And is it the fact that
20 Department of Health then continues to send out their own
21 proficiency tests -- does that not then -- is that in
22 place of what this is reading, the 100702? Because you're
23 doing it because Title 17 says so, so you're going to
24 continue doing it until we write Title 17. So for the
25 next probably two, three years laboratories will be

1 duplicating this effort and there's no way to stop it,
2 even though Title 17 says Department of Health may accept
3 those providers? Is there anything that we can do so that
4 those providers, those vendors could be accepted?

5 CHAIRPERSON KIMSEY: We could certainly look into
6 it. I mean I think currently -- I guess currently we
7 don't approve any outside vendors except, you know, our
8 own proficiency testing?

9 FOOD AND DRUG LABORATORY BRANCH CHIEF SOLIMAN:
10 That's correct. And we can consult with our
11 legal attorney.

12 CHAIRPERSON KIMSEY: Well, it sounds like we've
13 done that. And I'm just --

14 COMMITTEE MEMBER LOUGH: Or alternately if
15 Department of Health could become approved by ASCLD-LAB,
16 that would provide, you know, the laboratories then to be
17 able to use Department of Health as an approved provider.
18 And that certainly would be fine with us. But I don't
19 think they're --

20 CHAIRPERSON KIMSEY: The necessity for the
21 duplicate or the --

22 COMMITTEE MEMBER LOUGH: Well, Certainly
23 duplication is unnecessary. And that was why it was
24 written the way it was. But right now there is the
25 duplication, and it would be really simplified then if

1 Department of Health then could become an approved
2 provider and that would answer that question and then
3 they'll have to do -- only have to do Department of Health
4 tests in the mean time.

5 CHAIRPERSON KIMSEY: Is there a time frame for
6 how long it takes you to become an approved provider? Is
7 that --

8 COMMITTEE MEMBER LOUGH: No, I think Clay looked
9 into that a few years ago. So --

10 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

11 No, that's not correct. ASCLD doesn't publish
12 anything in terms of -- I have no idea what it takes to
13 become an ASCLD-LAB approved provider. They don't publish
14 anything in terms of the requirements, the basis for
15 accepting. I mean I'm among the approved providers, there
16 are programs that score the results and there are programs
17 that don't even provide any concentration or target value.
18 So I don't know what criteria ASCLD-LAB employs to approve
19 a provider, I suppose.

20 CHAIRPERSON KIMSEY: Paul, do you have some
21 information?

22 COMMITTEE MEMBER SEDGWICK: ASCLD-LAB in order to
23 approve a provider for the toxicology alcohol section,
24 you'd simply ask ASCLD-LAB to do it. If they determine,
25 that is, if the governing body determines there's a need,

1 the proficiency review committee will then send out an
2 inspection team. They will first send out a listing of
3 things that have to be done by the providers, asking a lot
4 of information from methods and then send an inspection
5 team.

6 CHAIRPERSON KIMSEY: So theoretically this takes
7 months, years?

8 COMMITTEE MEMBER SEDGWICK: I've seen it take
9 less than a month. Until I retired I was on the
10 proficiency review committee and I have done these
11 inspections.

12 And they are providing toxicology proficiency
13 samples made by relatively small laboratories all over the
14 country.

15 CHAIRPERSON KIMSEY: Okay.

16 COMMITTEE MEMBER SEDGWICK: So it can be done
17 rather quickly.

18 CHAIRPERSON KIMSEY: Okay. We'll certainly look
19 into that.

20 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

21 And we can. The published guidelines regarding
22 proficiency review committee don't discuss that. So it
23 must be some be some internal document. So perhaps we
24 could request to find out. But you refer to information
25 being requested, that's what that would take.

1 COMMITTEE MEMBER LOUGH: I'm sorry. The current
2 guidelines?

3 ABUSED SUBSTANCES ANALYSIS SECTION CHIEF LARSON:

4 Besides the ASCLD-LAB guidelines there's a
5 second -- there's an appendix that describes the
6 proficiency review committee. And it goes into great
7 detail of how a laboratory can challenge a result
8 inconsistent with the expected result. I've read it. I
9 don't recall -- I don't recall seeing a section that
10 describes the criteria and protocol and procedures that
11 ASCLD employs to approve a proficiency test provider,
12 either in their main document or in their supplement
13 that's associated with the proficiency review committee.

14 COMMITTEE MEMBER SEDGWICK: I haven't seen it
15 either. But ASCLD-LAB's published information is designed
16 specifically for laboratories to help them do this, in
17 fact in telling them how the proficiency review committees
18 work. It doesn't talk about private companies who want to
19 go into business. But I would say if you were to call
20 ASCLD-LAB and ask, they might be able to get you something
21 or tell you who to contact to get it set up.

22 CHAIRPERSON KIMSEY: Any other comments from the
23 Committee?

24 COMMITTEE MEMBER LOUGH: It will probably result
25 in a substantial savings to the state though in the

1 meantime because the state labs have to do the duplicate
2 tests as well and we have to pay for those approved
3 vendors.

4 CHAIRPERSON KIMSEY: Okay. Anything procedurally
5 that we might have overlooked at this point?

6 If not, I will close this third meeting of the
7 FARC Committee at approximately 6 after 3.

8 Thank you very much.

9 (Thereupon the Forensic Alcohol Review
10 Committee meeting adjourned at 3:06 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
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11 I further certify that I am not of counsel or
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